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Supreme Court, U.S.
FILED

97 685 OCT 20 1997

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Docket No.

IN THE SUPREME COURT OF THE UNITED STATES

October 1997 term

GLENN R. WAITE,

-Petitioner,

vs.

W. SCOTT CARPENTER, M.D., et. al.,

Respondents.

On Petition For Writ Of Certiorari To The Nebraska Supreme Court and The Nebraska Court of Appeals

---

PETITION FOR WRIT OF CERIORARI

Respectively submitted,
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Petitioner
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162 pp

Questions Presented

1) Whether the Judges of the Nebraska Court of Appeals may, under Article VI, clause 2, of the U.S. Constitution, decline jurisdiction of a federal question when that Court otherwise has both personal and subject-matter jurisdiction?

2) Whether the Nebraska Courts correctly denied to Petitioner any relief whatsoever on his claim that the District Court of Scotts Bluff County rendered a judgment of dismissal against him on September 5, 1991 in violation of the 14th Amendment to the U.S. Constitution?

3) Whether the Nebraska Courts correctly denied to Petitioner any relief whatsoever on his claim that the District Court of Scotts Bluff County rendered, sua sponte, a judgment against him on October 3, 1996 in violation of the 14th Amendment to U.S. Constitution by not providing him a notice and an opportunity for a hearing on the factual issues before the court?

4) Whether the Nebraska Courts may take a retaliatory action against Petitioner for having filed a federal claim or intimidate or chill his exercise of his right to file a federal claim in the future or his federal right to defend "pro se" against any future criminal charges brought by the state?

List of All Parties

Appellant: Glenn R. Waite, individually, and as personal representative of decedent's estate in a non-representative capacity

Appellees: W. Scott Carpenter, M.D., Regional West Medical Center, and its corporate affiliate Western Nebraska Community College

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TO THE HONORABLE U.S. SUPREME COURT:

I most respectively request this Court to grant my Petition for Writ of Certiorari because the decision of the Nebraska Court of Appeals / Supreme Court does not rest on an adequate and independent state ground, the questions presented are of serious public importance, and the Nebraska Court of Appeals decided this case in a way which conflicts with the relevant decisions of this Court. It is of serious public interest when (1) a litigant has filed a claim that a State Court has violated his 14th Amendment Due Process and Equal Protection rights by subjecting his liberty and property interests to a Judge whose wife is the Chairsperson of the School of Practical Nursing and a supervisor of a nursing student who damaged the decedent, Harriet Waite, and (2) the State Trial Court denies any relief whatsoever on his federal claim and (3) further threatens criminal action <u>if</u> the litigant files further pleadings pro se which might tend to further show the court's financial interest and (4) when the litigant timely files an appeal, the Appellate Court refuses to exercise jurisdiction over the federal claims solely for the reason it has determined the pleadings raising the federal claim are a nullity. A personal representative is appointed by the probate court and the administration of a decedent's estate and the prosecution of a wrongful death action is of public interest and the personal representative has a liberty interest under Nebraska law [Neb. Rev. Stat. section 30-2476 (21)] to employ or retain an attorney and that liberty interest should not be subjected to a Judge whose wife is a party to the lawsuit (App. of P. 65, 86).

Citations of the Official & Unofficial Reports of the Opinions and Orders in case number 38269.

Order of Dismissal by Judge Hippe on September 5, 1991.

Order of Complete Settlement & Distribution in the Matter of the Estate of Harriet I. Waite, deceased, PR90-78, Sheridan County Court, Nebraska, on May 15, 1996.

Order by Judge Empson on October 3, 1996 denying any relief whatsoever on any motions, amended motions, objections, and petitions filed after September 5, 1991.

Order by Judge Empson on October 25, 1996 denying any relief on motion for new trial.

Order of Dismissal for lack of jurisdiction on May 23, 1997 by the Nebraska Court of Appeals.

Order dated July 23, 1997 overruling the Petition for Further Review by the Nebraska Supreme Court.

Statement of the Jurisdiction of this Court.

This Court has jurisdiction under Title 28 U.S.C. sections 1257. Pursuant to Rule 13.1 of the U.S. Supreme Court Rules effective October 2, 1995, this petition is timely because the judgment or order sought to be reviewed was filed May 23, 1997 from the Nebraska Court of Appeals and this decision was subject to discretionary review by the Nebraska Supreme Court which overruled Appellant's Petition for Further Review on July 23, 1997.

The constitutional provisions, treaties, statutes, ordinances and regulations involved in the case.

Article III, section 2, of the U.S. Constitution states:

> "Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;- to all Cases affecting Ambassadors, other public Ministers and Consuls;- to all Cases of admirality and maritime Jurisdiction;-to Controversies which the United States shall be a Party;- to Controversies between two or more States;-between a State and Citizens of another State;-between Citizens of different States,-between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Article IV, section 2, of the U.S. Constitution states:

> "Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article VI, clause 2, of the U.S. Constitution states:

> "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the

> Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article I in addition to, and amendment of, the U.S. Constitution states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article XIV in addition to, and amendment of, the U.S. Constitution states:

> "**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Nebraska State Constitution, Article I, section 24:

> "**Sec. 24. Appeals; civil cases.** The right to be heard in all civil cases in the court of last resort, by appeal, error, or otherwise, shall not be denied."

Neb. Rev. Stat. section 25-1912 (3):

"(3) Except as otherwise provided in subsection (2) of this section and sections 29-2306 and 48-641, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court, and after being perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional."

Neb. Rev. Stat. section 30-2476 (21):

"**30-2476. Transactions authorized for personal representative; exceptions.** Except as restricted or otherwise prohibited by the will or by order in a formal proceeding and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly: (21) employ persons, including attorneys..."

Supreme Court / Court of Appeals Rule 7B(1):

"(1) A motion to dismiss for lack of jurisdiction may be filed at any time after the appeal has been docketed. Such a motion shall document the claimed lack of jurisdiction by citations to the dispositive portions of the record and to the controlling statutory and case law."

A Concise Statement of the Case.

Background

This is an appeal from an original proceeding, pursuant to the Due Process and Equal Protection clauses of the U.S. Constitution, by Petitioner to vacate a judgment of dismissal rendered by Judge Hippe whose wife was and is currently an officer in and the Chairsperson for the nursing school at Regional West Medical Center and Western Nebraska Community College and whose wife supervised a nursing student who damaged the decedent, Harriet Waite (App. of P. 30, 36). The judgment rendered by Judge Hippe in case 38269 was against Glenn R. Waite, personally, and as Personal Representative of the property of decedent, Harriet Waite (App. of P. 11). Case 38269 was brought on two causes of action: one was a wrongful death action brought by the personal representative and the other was a common law fraud action brought by Glenn R. Waite, personally (App. of P. 93-94). At the hearing held in open court on September 3, 1991, the Court entertained the question of whether Petitioner could retain an attorney after the cases had been on file nearly 4 months (App. of P. 86). On September 5, 1991, Judge Hippe denied Petitioner's right to retain an attorney (App. of P. 11). Except for an appeal in three related cases, petitioner has followed the court's Order by not retaining an attorney in these cases. On October 3, 1996, the Court determined the issues of fact and law "sua sponte" (App. of P. 6) without providing a hearing or a jury trial of the fact issues even though Petitioner requested a hearing (App. of P.

32). Petitioner was denied any relief whatsoever on his federal claims (App. of P. 10). Petitioner filed a motion for new trial (App. of P. 66) which was denied (App. of P. 5). A timely appeal was filed and a docket fee was deposited (App. of P. 71-73). On the motions of Appellee (App. of P. 95, 101), the Court of Appeals dismissed the appeal for lack of jurisdiction of the federal claims (App. of P. 1). The Nebraska Supreme Court denied further review of the federal claims (App of P. 3)

The Federal Question of Whether the District Court violated Petitioner's 14th Amendment Due Process Rights was Raised in and Determined against Petitioner by the District Court.

Petitioner's amended motion to vacate the judgment of dismissal states:

> "(1) the judgment of dismissal was rendered by Judge Robert O. Hippe whose wife, Anne Hippe, was employed as a registered nurse by the defendant, Regional West Medical Center a/k/a West Nebraska General Hospital or its affiliates, University of Nebraska Medical Center College of Nursing and Western Nebraska Community College School of Nursing, on September 3, 1991 when Judge Hippe heard arguments at a joint hearing with Judge Alfred Kortum in cases 38267, 38268, and 38271, and on September 5, 1991 when Judge Hippe signed the order dismissing this case all done in violation of Neb. Rev. Stat. section 24-739 (Cumm. Supp. 1992), article I, section 3 of the Nebraska Constitution, and the 14th amendment to the U.S. Constitution."

The third amended petition states:

"[page 1] Anne Hippe, has a financial interest in the results of this suit since Anne Hippe is a nursing instructor and Chairsperson of the practical nursing program which is a joint program of Regional West Medical Center and Western Nebraska Community College."

"16. From April 2 to April 17, 1989, Harriet Waite was cared by Rebecca Bartlett, Student Practical Nurse of the Western Nebraska Community College. Anne Hippe, wife of Judge Hippe, was at all times in reference to this cause of action an instructor or director of the Practical Nursing Program at Western Nebraska Community College. Rebecca Bartlett, S.P.N., acted within within the scope of their employment and student duties and therefore her negligent conduct was imputable to the defendant, Regional West Medical Center and affiliate, Western Nebraska Community College, under the doctrine of respondeat superior. Rebecca Bartlett, S.P.N., recorded choking episodes or difficulty taking fluids, food or medication by Harriet Waite. Rather than stop all food and protecting Harriet Waite from further aspiration events, Rebecca Bartlett, S.P.N., negligently cared for Harriet Waite by continuing to give intestate fluids, food or medications knowing that intestate could have further aspiration events and that such further aspiration events could contribute to Harriet Waite's death. As a direct and proximate result of Student Bartlett's negligence, Harriet Waite sustained injury in the form of further

recurrent aspiration events and worsening of her aspiration pneumonia with increased difficulty breathing which directly contributed to her death due to morphine overdose."

The Order of October 3, 1996 states:

"IT IS THEREFORE ORDERED that all motions, amended motions, objections and petitions for any relief whatsoever which were filed after September 5, 1991 are overruled and dismissed."

Petitioner's Motion for New Trial states:

"[page 2] An adjudication on the grounds of "Res Judicata" goes to the facts in the cases and rests on the introduction of competent evidence and this court denied this party a notice and the opportunity for a hearing to present additional evidence or objections on this issue in violation of his 5th and 14th Amendment rights under the U.S. Constitution."

"d. this court denied this plaintiff his right of trial by jury which is guaranteed by Article VII of the United States Constitution on all issues of fact in this action."

"g. It is a violation of the due process clause of the 14th Amendment to the U.S. Constitution to punish the plaintiff for doing what he is legally entitled to do such as to represent himself on the issues presented in this action (whether or not the September 5, 1991 order of dismissal is void under the 14th Amendment and whether the order of dismissal on September 5, 1991 is irregular under Neb. Rev. Stat. section 25-2001 et. seq.)."

District Court Order dated October 25, 1996:

> "IT IS THEREFORE ORDERED THAT Mr. Waite's "Motion to Reconsider Order Dated October 3, 1996" is denied."
>
> "IT IS FURTHER ORDERED THAT pursuant to the court's authority and duty as set out above, patterned in part on the procedure set out in 24-318 R.R.S. 1995, the clerk of this court shall notify the county attorney of Scotts Bluff County, Nebraska, if any further pleadings are filed by Mr. Waite pro Se in this case or any companion case. The county attorney is directed to make a complete investigation and if satisfied any contempt of court or unauthorized practice of law or any other criminal offense has been committed, to proceed promptly with the appropriate prosecution."

In the Court of Appeals, the Federal Questions of Whether the District Court Correctly Denied any Relief Whatsoever in Petitioner's Amended Motion to Vacate Judgment of Dismissal, in Petitioner's Third Amended Petition, and in Petitioner's Motion for New Trial were Raised in and Determined by the Court of Appeals against Petitioner.

Petitioner, in Appellant's Objection opposing Motion for Summary Dismissal filed by Appellee Carpenter, states:

> "3. Appellee erroneously concludes that this appeal is frivolous. Plaintiff has a federal right to file a claim that the judgment of dismissal on September 5, 1991 is void pursuant to the 14th Amendment to the U.S. Constitution."

Petitioner, in Appellant's Objection to the Amended Motion for Summary Dismissal and Motion for Summary Affirmance filed by Appellee, Carpenter, states:

> "Appellant hereby states that his amended motion dated December 29, 1995 to vacate the judgment of dismissal presents a federal claim and this Court cannot, under the supremacy clause (Article VI, clause two, U.S. Constitution), decline jurisdiction of a federal claim by refusing to enforce a right arising from the law of the United States; Howlett v. Rose, 496 US 356, 110 L.Ed2d 332, 339, 110 S.Ct. 2430 (1990)."

Appellant's Brief filed January 17, 1997 contains the assignments of error:

> "(1) The District Court erred in finding that "Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska" and as a result (1) violated Waite's U.S. Constitutional right of access to the courts by ordering that if any further pleadings are filed by Mr. Waite "pro se", the clerk of court was to report such activity to the county attorney so that Waite could be punished for having exercised his U.S. Constitutional right to seek judicial relief in this action or proceeding which affects his individual rights...."
>
> "(3) The District court erred in finding that it is appropriate for the court to address the issues of fact and law "sua sponte" without a hearing because Nebraska Evidence Rule 201 (5) and the 14th Amendment to the U.S. Constitution allow Waite an opportunity to be heard

when Waite requested such hearing in his motion for new trial after he was first notified that judicial notice had been taken on October 3, 1996 by the Court."

The Order dated May 23, 1997 by the Court of Appeals states:

"Appeal dismissed. See Rule 7B(1)."

The Order dated May 23, 1997 by the Court of Appeals states:

"Appeal dismissed. Motion for summary affirmance denied as moot."

Appellant's Petition for Further Review assigns the following errors:

"1) The Court of appeals erroneously determined it lacked jurisdiction because the claim by Carpenter in his motion for summary dismissal that the pleadings filed by Waite after September 5, 1991 are a nullity is a matter going to the merits of the controversy rather than a lack of jurisdiction over the merits and this erroneous determination violated Waite's rights of access to the courts pursuant to Article IV and Amendments 1 and 14 of the U.S. Constitution.

2) The Judges of the Court of appeals who entered the order dismissing this appeal under Supreme Court and Court of Appeals Rule 7B(1) for lack of jurisdiction violated Article VI of the U.S. Constitution by refusing to take jurisdiction of the federal questions within their jurisdiction."

The Order dated July 23, 1997 by the Nebraska Supreme Court states:

"Petition for further review overruled."

Direct and concise argument.

SUMMARY

The Orders dated October 3, 1996 and October 25, 1996 were rendered against Petitioner (hereinafter "Waite") personally, as sole distributee and as personal representative (App of P. 4, 6). Waite timely filed his notice of appeal and deposited the docket fee with the Clerk of Court (App. of P. 71-73). Respondent (hereinafter "Carpenter") moved to dismiss the appeal for lack of jurisdiction based on his claim that the pleadings raising the federal claims filed after September 5, 1991 are a nullity (App. of P. 95, 101). Waite objected and claimed that the Court of Appeals was violating the Supremacy Clause of the U.S. Constitution (App. of P. 97, 103) by refusing to decide the federal question of whether the State trial court violated the plaintiff's liberty and property interests by subjecting his interests to Judge Hippe whose wife is the Chairsperson of the practical nursing program and who supervised a nursing student who damaged the decedent (App. of P. 36, 41). The Nebraska Court of Appeals on May 23, 1997 overruled the objection and held that the pleadings claiming a federal right filed after September 5, 1991 are a nullity (App. of P. 1). The federal question that the Court of Appeals violated the Supremacy Clause was raised in the Nebraska Supreme Court and that Court denied petitioner's claims (App. of P. 3) This Court clearly has jurisdiction and should decide this federal question of extreme public interest.

THIS COURT SHOULD GRANT THIS PETITION FOR WRIT OF CERTIORARI BECAUSE IT IS EQUITABLE AND IT IS IN THE PUBLIC INTEREST.

Obviously, this Court could not grant this Petition for Writ of Certiorari solely on the basis of equity without federal question jurisdiction. But, every Judge or Juror who has jurisdiction generally decides the outcome of a case according to what he believes is right or wrong. I ask every Justice who reads this Petition to seriously consider this matter according to what he believes is right or wrong. Is it right or wrong for a Judge whose wife is a party in the case and who supervised a nursing student who damaged the decedent to decide the case for his wife? Does Due Process and Equal Protection permit a State Court to subject the plaintiff's liberty or property interests to a Judge whose wife is a party in the action? Do not equitable principles dictate that the interests of substantial justice to the class of persons represented in the action should allow the personal representative an opportunity to retain counsel before dismissal? See Kasharian v. Wilentz, 93 N.J.Super 479, 226 A.2d 437 (1967)? Where the issue of an alleged unauthorized practice of law against the personal representative arose as a matter out of or secondary to the administration of the decedent's estate, should not the personal representative be allowed to defend the matter in his individual capacity? See Kane v. Paul, 39 US 33, 10 L.Ed 341 (1840). I am a licensed physician and my mother had no terminal illness and had only arthritis pain which was adequately controlled with anti-inflammatory drugs and without narcotics

before a morphine drip was forced upon her. When offered morphine, she refused it and because she had been paralyzed by a previous inatrogenic event, she could not, on her own, have discontinued the continuous intravenous infusion of morphine. When she had obvious signs of overdoseage, the ordering physician killed her by personally increasing the morphine dose when she was experiencing absolutely no pain (App. of P. 48). The final outcome of this case is in the hands of this Court. May the God in Heaven guide your decision on these important matters.

THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI BECAUSE THE DECISION OF THE NEBRASKA COURT OF APPEALS ON MAY 23, 1997 DOES NOT REST AN AN ADEQUATE AND INDEPENDENT STATE SUBSTANTIVE OR PROCEDURAL GROUND PRECLUDING REVIEW OF THE FEDERAL QUESTIONS BY THIS COURT AND THE NEBRASKA COURT OF APPEALS DECIDED THE FEDERAL QUESTION IN A WAY WHICH CONFLICTS WITH THE RELEVANT DECISIONS OF THIS COURT.

Standards: The adequacy of the state-law ground to support a judgment precluding litigation of the federal claim is a federal question, which the U.S. Supreme Court reviews de novo; Howlett v. Rose, 496 U.S. 356, 110 L Ed 2d 332 at 340, 110 S Ct 2430 (1990). If the judgment sought to be reviewed by the Supreme Court is supported by an adequate and independent state substantive ground, the Supreme Court has no jurisdiction; Henry v. Mississippi, 379 U.S. 443, 13 L Ed2d 408, 85 S Ct 564 (1965). However, if the nonfederal ground is so interwoven with the other as not to be an independent matter or is not of sufficient

breath to sustain the judgment without any decision of the other or is a mere device to prevent a review of the decision upon the federal question, the Supreme Court's jurisdiction is plain; Chicago, B. & Q. R. Co. v. Illinois, 200 U.S. 561, 50 L Ed 596, 26 S Ct 341 (1906). The Supreme Court looks at prior decisions by the state courts to see if the state court is making an interpretation of state law with a specific intent to deprive a litigant of a federal right; Williams v. Georgia, 349 U.S. 375, 99 L Ed 1161, 75 S Ct 814 (1954). A state court may not avoid deciding federal questions, and thus defeat the jurisdiction of the United States Supreme Court, by putting forward nonfederal grounds of decision which are without any fair or substantial support. Whether a pleading sets up a sufficient right of action or defense, grounded on the Constitution or a law of the United States, is necessarily a question of federal law; Staub v. Baxley, 355 US 313, 2 LEd2d 302, 78 S.Ct. 277 (1957).

There are Four Reasons why this Court has Jurisdiction of the Federal Questions.

First, the decision of the Nebraska Court of Appeals on May 23, 1997 which sustained Carpenter's claim that the pleadings filed after September 5, 1991 claiming a federal right are a nullity and therefore the State Court lacks jurisdiction does not rest on an independent and adequate state ground because whether a pleading sets up a sufficient right of action or defense grounded on the Constitution or a law of the United States is necessarily a federal question and where a case coming from a state court presents

that question, the U.S. Supreme Court must determine for itself the sufficiency of the allegations displaying the right or defense, and is not concluded by the view taken of the question by the state court; Staub v. Baxley, supra, 355 US at 318.

Second, the decision of the Nebraska Court of Appeals on May 23, 1997 which sustained Carpenter's claims under Nebraska Supreme Court Procedural Rule 7B(1) that the court lacked jurisdiction because the pleadings are a nullity and citing Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957) is based on a discretionary rather than a jurisdictional rule of law. In Nicklaus, the court held that proceedings in a suit by a person not entitled to practice law are a nullity, and suit may be dismissed; but dismissal of proceedings for such cause is a drastic remedy and may not be required in all cases. Obviously, the rule set forth by the Nebraska Supreme Court where the pleadings are a nullity in the circumstances of the Niklaus dismissal is not jurisdictional, but is discretionary in nature. The U.S. Supreme Court has held that where the state grounds of decision rest on a "discretionary" rather than a "jurisdictional" issue, it does not bar review in the U.S. Supreme Court by certiorari; Sullivan v. Little Hunting Park, 396 US 229, 24 L.Ed2d 386, 90 S.Ct. 400 (1969); Williams v. Georgia, 349 U.S. 375, 99 L Ed 1161, 75 S Ct 814 (1954).

Third, the decision of the Nebraska Court of Appeals on May 23, 1997 which sustained Carpenter's claims under Nebraska Supreme Court Procedural Rule 7B(1) that the Court lacked jurisdiction because the pleadings are a nullity is not tenable and

does not have fair support in Nebraska law. Under Nebraska law, the appellate court has jurisdiction when the notice of appeal has been filed in the district court within thirty days of the Order sought to be reviewed by the Appeals Court and a docket fee has been deposited; Fick v. Herman, 161 Neb. 110, 72 N.W.2d 598 (1955); Madison County v. Crippen, 143 Neb. 474, 10 N.W.2d 260 (1943). The record in this case clearly shows (App. of P. 71-73) that the notice of appeal was filed within 30 days of the district court's orders on October 3, 1996 and October 25, 1996 and the docket fee was deposited with the clerk of court. Therefore, the Court of Appeals clearly had both subject-matter jurisdiction and personal jurisdiction. Under Nebraska law, lack of subject matter jurisdiction cannot be based on whether or not the pleadings are a nullity because the signing and the filing of pleadings is based on the conduct of the parties and subject-matter jurisdiction cannot be conferred or lost by the conduct of the parties; Concordia Teachers College v. Nebraska Dept. of Labor, 252 Neb. 504, 563 N.W.2d 345 (1997) or conferred or lost on the sufficiency of the pleadings; Gasper v. Mazur, 157 Neb. 857, 62 N.W.2d 117 (1954); Millman v. County of Butler, 235 Neb. 915, 458 N.W.2d 207 (1990). Where a nonfederal ground is so unfounded that it properly may be regarded as illusory, then it is not adequate and the U.S. Supreme Court has jurisdiction; Lawrence v. State Tax Com., 286 US 276, 76 LEd 1102, 52 S.Ct. 556 (1932).

Fourth, the Court of Appeals cited Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989) in its Order dated May

23, 1997, but the case law in Back Acres obviously does not apply to this case and the State Court has made an interpretation of case law with a specific intent to deprive Waite of his federal rights. In Back Acres, Peister, who was not one of the original plaintiffs, entered his appearance in the Appellate Court but failed to show that he had been named trustee of Back Acres Pure Trust and failed to show that the judgment of the lower court was rendered against him either as trustee or personally.

In striking contrast, Waite has been the original party at all stages of the proceedings in case 38269 based on his letters of personal representative and on the order of the probate court making him the sole distributee of the estate (App. of P. 93, 30, 36, 6) and the lower court decision was rendered against him personally (App. of P. 6). Since Waite was and is the duly appointed personal representative and Nebraska Law [Neb. Rev. Stat. section 30-2476 (21); In Re Estate of Snover, 4 Neb. App. 533, 546 N.W.2d 341 (Neb. App. 1996)] provides an avenue by which he may employ or retain an attorney, the State Court must grant the same privileges and immunities and the same Equal Protection to the personal representative in the same or similar circumstances; Kasharian v. Wilentz, 93 N.J.Super 479, 226 A.2d 437 (1967). This Court has held that the constitutional guarantees of due process and equal protection both call for procedures which allow no invidious discriminations between persons and different groups of persons; Griffin v. Illinois, 351 US 12, 100 L.Ed 891, 76 S.Ct. 585 (1955). Furthermore,

Nebraska law has allowed a personal representative to represent himself; Miller v. Janecek, 210 Neb. 316, 314 N.W.2d 250 (1982). The judgment dated May 23, 1997 rendered by the Nebraska Court of Appeals is without fair or substantial support. The Supreme Court looks at prior decisions by the state courts to see if the state court is making an interpretation of state law with a specific intent to deprive a litigant of a federal right; Williams v. Georgia, 349 U.S. 375, 99 L Ed 1161, 75 S Ct 814 (1954).

This Court Should Grant this Petition for Writ of Certiorari because the Decision of the Nebraska Court of Appeals and the Decision of District Court Decided the Federal Questions in a Way which Conflicts with the Relevant Decisions of this Court, a State Court of Last Resort, or a U.S. Court of Appeals.

In Howlett v. Rose, supra, 496 US at 381, this Court stated, in reference to the Supramacy Clause, that a State Court may not evade the strictures of the Privileges and Immunities Clause by denying jurisdiction to a court otherwise competent.

The Lower Court decision was clearly rendered against me, the Petitioner (App of P. 4, 6) and I timely filed my appeal and met all the jurisdictional requirements for invoking the jurisdiction of the Nebraska Court of Appeals (App. of P. 71-73), but the Nebraska Court of Appeals dismissed this Appeal on the basis of lack of jurisdiction of the federal claims because it determined that the pleadings filed after September 5, 1991 claiming a federal right are a nullity (App. of P. 1). It is obvious that the

Nebraska Court of Appeals decided a federal question which conflicts with the relevant decisions of this Court.

It might be argued that the dismissal of the appeal for lack of jurisdiction left the decision of the District Court on October 25, 1996 intact, even though the Court of Appeals denied as moot the motion for summary affirmance (App. of P. 2). However, those Orders are not based on an adequate and independent state ground of decision because the claim in the motion for new trial (App. of P. 66) was that the court on its own motion (sua sponte) determined the issue of Res Judicata without notice and an opportunity for a hearing in violation of the 14th Amendment and the amended motion to vacate judgment of dismissal presented a federal question. Res Judicata was not pleaded by any party and therefore the court set itself in motion and conducted its own investigation, admitted or excluded its own evidence, and ruled on its own objections. Under Nebraska law, the issues of law and fact are determined by the pleadings and advises the adversary as to what adversary must meet; Bakody Homes and Development, Inc. v. City of Omaha, 246 Neb. 1, 516 N.W.2d 244 (1994), and a court cannot set itself in motion nor has it power to decide questions except as presented by parties in pleadings and anything that is decided beyond them is coram non judice and void; National Fire Ins. Co. of Hartford, Conn. v. Evertson, 153 Neb. 854, 46 N.W.2d 489 (1951). It is a denial of Due Process under the 14th Amendment when the court fails to inform the party of which specific facts the court is taking judicial notice because not only does the party not know of what

evidence he is being charged, but, in addition, he is deprived of any opportunity to challenge the deductions drawn from such notice or to dispute the notoriety or truth of the facts allegedly relied upon. Moreover, there is no way by which an appellant court may review the facts and law of the case and intelligently decide whether the findings of the lower court are supported by the evidence when the evidence is unknown; Gardner v. Louisiana, 368 US 157, 173, 7 L.Ed2d 207, 82 S.Ct. 248 (1961). It is obvious that the State District Court decided a federal question in a way which conflicts with the relevant decisions of this Court.

Under Nebraska law, the Court cannot take judicial notice of disputed facts; Wolgamott v. Abramson, 5 Neb. App. 478, 560 N.W.2d 859 (1997). Furthermore, Article I, Section 6, of the Nebraska State Constitution and Article VII of the U.S. Constitution guarantees a trial by jury of all issues of fact when such jury trial has not been waived. In a law action, a party is entitled to a jury trial as a matter of right; Yeister v. Broadwell, 80 Neb. 718, 115 N.W. 293 (1908); Lett v. Hammond, 59 Neb. 339, 80 N.W. 1042 (1899). Since this is a suit for common law fraud action and wrongful death action, the U.S. Constitution protects the right to a trial by jury and denial of that right is a federal question; Baltimore & Carolina Line, Inc. v. Redman, 295 US 654, 74 L.Ed 1636, 55 S.Ct. 890 (1935); Lion v. Mutual Ben. Health & Acci. Asso, 305 US 484, 83 L.Ed 303, 59 S.Ct. 297 (1938), and in a wrongful death action; Magenau v. Aetna Freight Lines, Inc., 360 US 273, 3 L.Ed2d 1224, 79 S.Ct. 1184 (1959).

Such right would also fall under the 14th Amendment's Equal Protection where Nebraska law provides an avenue for a jury trial in all law actions, it cannot deny the same protection for other persons similarily situated; Louisville Gas & E. Co. v. Coleman, 277 US 32, 72 L.Ed 770 (1927); Mitchell v. United States, 313 US 80, 85 L.Ed 1201 (1940); Shelley v. Kraemer, 334 US 1, 92 L.Ed 1161 (1947). It is obvious that the State District Court decided a federal question in a way which conflicts with the relevant decisions of this Court.

The decision (App. of P. 4-6) of the Scotts Bluff County Court that "Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska" and the Court's Order that if any further pleadings are filed by Mr. Waite Pro Se, the county attorney is to conduct a criminal investigation does not rest on an independent and adequate state ground of decision. In Harrison v. Springdale Water & Sewer Com'n, 780 F.2d 1422 (8th Cir. 1986), the Court held that an individual's right of access to the courts cannot be impaired, either, directly or indirectly, by threatening or harrassing an individual in retaliation for filing lawsuits. A state official may not take a retaliatory action against an individual designed either to punish him for having exercised his U.S. constitutional right to seek judicial relief or to intimidate or chill his exercise of that right in the future. In Bordenkircher v. Hayes, 434 US 357, 54 L.Ed2d 604, 98 S.Ct. 663 (1978), this Court held that to punish a person because he has done what the law plainly allows him to do is a Due Process violation of the most basic sort,

and for a state official to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional. It is obvious that the State District Court decided a federal question in a way which conflicts with the relevant decisions of this Court and with the relevant decision of a United States Court of Appeals.

Whether or not "Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska" in prosecuting a federal claim that the state Court subjected his liberty and property rights to a Judge who has a direct and substantial financial interest in violation of the 14th Amendment in the lawsuit is a federal question; Aetna Life Ins. Co. v. Lavoie, 475 US 813, 825, 89 L.Ed2d 823, 106 S.Ct. 1580 (1986) and this Court is not required to determine whether in fact the Judge was influenced, but only whether sitting on the case then before the Judge would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true.....and that "justice must satisfy the appearance of justice". See Exxon Corporation v. Heinze, 32 F.3d 1399 (1994). Furthermore, the term "pleadings" in the context of this case could include pleadings filed in this case by Waite which might tend to show or provide further evidence of Judge Hippe's financial interest in this lawsuit. Judge Hippe has never filed a document certifying his disqualification and until he does this, his judicial acts are the official acts of the State of Nebraska. Obviously, Judge Hippe is using the State Courts for his own personal benefit because he has not

certified his disqualification and obviously Judge Empson's order threatening retaliation against Waite for filing further pleadings "pro se" which might tend to show Judge Hippe's financial interest is a violation of federal law. If the County Attorney filed his report in the case or criminal charges were filed against me in the case, the Court has already ruled that I may not retain an attorney in this case (App. of P. 87) and the Court has ruled (App. of P. 6) that the County attorney is to prosecute me if I file further pleadings "pro se". The 6th Amendment to the U.S. Constitution allows me either an attorney or a "pro se" defense of a criminal charge. Since the State Court has ruled that I cannot retain an attorney in this case (App of P. 11, 87) and has ruled that <u>if</u> I file further pleadings "pro se", I face criminal charges (App. of P. 6), how am I suppose to prosecute a claim that the State Court violated my Due Process and Equal Protection rights under the U.S. Constitution or defend any criminal charges?

This case also involves the federal question of whether the District Court properly administered justice under the Due Process and Equal Protection Clauses of the U.S. Constitution in regard to the property being administered by the probate court (App. of P. 31). No evidence was introduced at the hearing held September 5, 1991 by Judge Hippe whose wife is a party to the lawsuit in regard to who is the next of kin or sole heir (App. of P 86), but if there had been evidence introduced that Waite was the sole next of kin or the person who takes the decedent's estate ("res") under the statutes of distribution when the probate

court had yet to determine that issue, and the defendants who are not parties to the county court proceedings introduced evidence that I was not the sole heir or next of kin and the Scott Bluff County District Court determined this issue of fact, would that judgment be given full faith and credit in this federal court when the District Court, under Nebraska law, has no jurisdiction over the decedent's estate or property being administered by the probate court? Under Nebraska law, only the probate court has subject-matter jurisdiction over the decedent's estate and the fact issue of who is the sole heir of the property being administered by the probate court; Neb. Rev. Stat. section 24-517 (Reissue 1995).

This court has ruled that an administrator appointed by a state probate court is an officer of that court and his possession of the decedent's property or property owned by the next of kin in a wrongful death action is a possession taken in obedience to orders of that court and it is a possession which cannot be disturbed by any other court and the court which first takes jurisdiction of the "res" has jurisdiction over the "res" until it has rendered a final judgment; Byers v. McAuley, 149 U.S. 608, 37 L.Ed 867 (1892). How can an administrator account for property (chose in action) being administered by the county probate court if another court can interfere and take the property out of his hands by a process which violates the Due Process and Equal Protection clauses of the U.S. Constitution by subjecting the personal representative's liberty and property interests to a Judge whose wife is a party to the suit? Under Nebraska law, the term

"next of kin" is the person who takes the decedent's estate under the statutes of distribution; Mabe v. Gross, 167 Neb. 593, 94 N.W.2d 12 (1959). Under Nebraska law, the only Court which has jurisdiction to determine who are the next of kin of the decedent and how the estate is to be distributed is the county probate court; Neb. Rev. Stat. section 24-517 (Reissue 1995). An adjudication by the county court of a matter within its authority is, unless appealed from, final and not subject to collateral attack; In Re Coleman's Estate, 179 Neb. 270, 137 N.W.2d 822 (1965).

Whether the Order of Complete Settlement & Distribution by the county court which determined that Waite is the person who takes the decedent's estate under the statutes of distribution (App. of P. 12) has full faith and credit in this Court is a federal question which this Court has jurisdiction to determine.

CONCLUSION

Petitioner has clearly shown that at all stages of the proceedings in the State Court he raised a federal question and the State court denied his federal claims. The decision of the Nebraska Court of Appeals on May 23, 1997 dismissing the appeal for lack of jurisdiction on the basis that the pleadings raising federal claims filed after September 5, 1991 are a nullity does not rest on an adequate and independent state substantive or procedural ground of decision because whether the pleadings claiming a federal right are a nullity is a federal question and therefore this Court has jurisdiction over that federal question. The record clearly shows that the Court of

Appeals evaded the federal claims in violation of the Supremacy Clause of the U.S. Constitution. This issue was clearly raised in Appellant's Petition for Further Review and the Nebraska Supreme Court clearly denied the claim.

A State Judge who determines the case for his wife who is a party is a matter of serious public interest. The administration of a decedent's estate is a matter of serious public interest when another court (State District Court and Court of Appeals) not having jurisdiction over the decedent's property determines a probate matter in violation of the Due Process and Equal Protection clauses of the US Constitution.

Petitioner most respectively requests that this Court grant his petition of writ of certiorari and reverse the decisions of the lower court because it is in the public interest for this Court to determine these matters and a failure to grant the writ and determine the federal questions would work a gross injustice and cast a dark shadow over the judiciary and destroy the confidence of the public in the judiciary.

WHEREFORE, Petitioner most earnestly prays before the God in Heaven and before this Court, in the interests of justice and equity, that this most respectable Court will grant his petition for writ of certiorari.

Respectively submitted,

Glenn R. Waite,
Petitioner
1202 West 28th St.#2
Cheyenne, WY 82001
307-634-8712

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NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

May 23, 1997

Glenn R. Waite, Personal Representative
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-96-1118, Waite v. Carpenter

Mot. of Appellee for Summary Dismissal

filed 12/10/96 **has been reviewed by the court and the following order entered:**

Appeal dismissed. See Rule 7B(1). See, also, Back Acres Pure Trust v. Fahlander, 233 Neb. 28, 443 N.W.2d 604 (1989); Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

May 23, 1997

Glenn R. Waite, Personal Representative
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-96-1118, Waite v. Carpenter

Mot. of Appellee for Summary Dism or S/A

filed 02/14/97 **has been reviewed by the court and the following order entered:**

Appeal dismissed. Motion for summary affirmance denied as moot.

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

July 23, 1997

Glenn R. Waite, Personal Representative
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-96-1118, Waite v. Carpenter

Pet Appellant for Further Review & Brf **filed** 06/09/97 **has been reviewed by the court and the following order entered:** Petition for further review overruled.

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER	)))))	Case No. 38269 ORDER OVERRULING MOTION TO RECONSIDER ORDER OF OCTOBER 3, 1996

On October 25, 1996, having examined the Motion to Reconsider the order of October 3, 1996, and the brief and supplemental brief submitted in support of the motion, the court makes these findings:

1. It is appropriate for the court to address the pleadings Sua Sponte to save aggravation and attorney fees for innocent parties to this case.
2. There is no pleadings in Nebraska trial court practice recognized as a "Motion to reconsider." It seems appropriate to treat such a pleading as a motion for new trial.
3. This court's order October 3, 1996, "that all motions, amended motions, objections and petitions for any relief whatsoever which were filed after September 5, 1991, are overruled and dismissed" was and is correct in all respects. See the reasoning of paragraph 5. below.
4. Mr. Waite has improperly styled the case to suit himself. The plaintiff in this case is and always has been "Glenn R. Waite, Personal Representative of the Estate of Harriet I. Waite, Deceased," No order of the court has been made permitting the substitution of a party plaintiff as is required by section

25-322 R.R.S. 1995. No application for such relief was ever filed. The fact that the court was previously unaware of that spurious change and was taken in by the ruse does not help Mr. Waite now.

5. Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska. Each pleading he filed compounds the offense which caused the dismissal of each of the lawsuits he has filed. The Nebraska Court of Appeals in Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 879 (1995), could not have been more plain about the reasons: "We affirm [in our original case] because we agreed with the district court that the pro SE personal representative was engaged in the unauthorized practice of law and that dismissal was the appropriate remedy and sanction."

5. The reminder from the court in that case that "Perhaps this is an appropriate time to remind Waite that it is the duty of the courts to prevent abuse of process and frivolous proceedings in the administration of justice," has gone unheeded by Mr. Waite. Enough is enough. This court will no longer ignore its duty in that regard.

IT IS THEREFORE ORDERED THAT Mr. Waite's "Motion to Reconsider Order Dated October 3, 1996," is denied.

IT IS FURTHER ORDERED THAT pursuant to the court's authority and duty as set forth above, patterned in part on the procedure set out in 24-318 R.R.S. 1995, the clerk of this court shall notify the county attorney of Scotts Bluff County, Nebraska, if any further pleadings are filed by Mr. Waite pro SE in this case or any companion case. The

county attorney is directed to make a complete investigation and if satisfied any contempt of court or unauthorized practice of law or any other criminal offense has been committed, to proceed promptly with the appropriate prosecution.

By the Court,

_____
Paul D. Empson
District Judge

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER	)	Case No. 38269 ORDER OVERRULING MOTIONS, AMENDED MOTIONS, OBJECTIONS, AND PETITIONS.

On October 3, 1996, having examined the pleadings filed in this case and having taken judicial notice of Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992) and Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 879 (1995), and two of the Scotts Bluff County District Court cases appealed from therein, (numbred 38268 and 38271), this court finds that it is appropriate for the court to address the issues of fact and law sua sponte and further finds as follows:

1. On July 19, 1991, defendant Regional West moved "to Strike Pleadings and to Dismiss..." the petition. On August 8, 1991, defendant Carpenter moved for summary judgment. Each motion was based on the

unauthorized practice of law by Glenn R. Waite, Personal Representtive of the estate of Harriet I. Waite, Deceased.

2. On September 3, 1991, the motions were heard in open court with all parties appearing by counsel and the case was taken under advisement.

3. On September 5, 1991, both motions were granted and the case was dismissed. the court cited Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989), making it clear that the judgment had been made on the basis urged by the defendants in their motions.

4. Parallel events occurred in thecases numbered 38268 and 38269. They were each dismissed on the same motions and for the same reasons as this case was dismissed.

5. Those two cases (and a third which was not examined by this court) were appealed. The decision of the Nebraska Court of Appeals respecting those two cases is found at Waite v. Carpenter 1 Neb. App. 321, 496 N.W.2d 1 (1992). The trial court's judgment of dimissal was affirmed in each case. Some pertinent language from the opinion is this:

> The statute, 7-101, prevents the filing of any paper in any action "unless the same bears the endorsement of some admitted attorney, or is drawn, signed, and presented by a party to the action or proceeding." Here, the pleadings were not signed by an admitted attorney, but rather, by Waite, and it is only where a party acts in a nonrepresentative capacity that he may file his own pleadings. There can be no question that Waite was engaged in the practice of law in violation of 7-101.

> The district court for Scotts Bluff County found that there was no genuine issue of material fact and that the defendants were entitled to judgment as a matter of law, citing Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989). The court entered summary judgment for the defendants against the plaintiff and dismissed Wait's actions. Accordingly, we now consider whether the district court correctly dismissed Waite's lawsuits.
>
> And,
>
> For the reasons above, the decisions of the district court dismissing these three cases are affirmed in all respects.

6. Further hearing was refused by the Nebraska Supreme Court, a mandamus was delivered to the District Court on February 11, 1993, and judgment was entered thereon. Those cases are disposed of.

7. The cases appealed from and this case are alike in these additional respects:

A. Each lawsuit was filed on April 8, 1991 by Glenn R. Waite, personal representative of the estate of Harriet I. Waite, deceased, and alleged acts of negligence against Harriet Waite by Carpenter, Regional West and others. Glenn R. Waite had been appointed personal representative of Harriet Waite on January 2, 1991, by the county court for Sheridan County, Nebraska.

B. Each was styled as a "Complaint" and all named multiple defendants including the hospital, a medical group, doctors, and nurses. The same Dr. Carpenter and Regional West Medical Center were named in all these suits. All of the parties or their privities present in this action were involved in the prior action.

C. The basis of each cause of action is the alleged wrongful death of Harriet I. Waite.

D. After the decision of the Nebraska Court of Appeals was filed, Waite attempted to proceed by claiming he was the sole heir of the decedent, Harriet I. Waite, and he filed motions to vacate the judgment and other pleadings in furtherance of that claim alleging, in part, that the district court lacked jurisdiction to determine the question of his alleged unauthorized practice of law and that the district court was biased at the time of the dismissal of the original cases. Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 879 (1995) and see the pleadings in this case.

The court therefore concludes:

1. Baltensperger v. United States Dept. of Ag., 250 Neb. 216, ___N.W.2d___ (June 7, 1996) is dispositive of this case. There the court said:

> The doctrine of res judicata bars the relitigation of a matter that has been directly addressed or necessarily included in a former adjudication if (1) the former judgment was rendered by a court of competent jurisdiction, (2) the former judgment was a final judgment, (3) the former judgment was on the merits, and (4) the same parties or their privies were involved in both actions. Lincoln Lumber Co. v. Fowler, 248 Neb. 221, 533 N.W.2d 898 (1995); Hangman v. Bruening, 247 Neb. 769, 530 N.W.2d 247 (1995); Wicker v. Vogel, 246 Neb. 601, 521 N.W.2d 907 (1994).

2. The matter of Waite's unauthorized practice of law and its effect on the cases

he filed has been directly addressed in the three cases appealed to the Nebraska Court of Appeals and in this present case. Both the District Court of Scotts Bluff County and the Nebraska Court of Appeals are courts of competent jurisdiction to adjudicate these matters, and their adjudications are alike. Their adjudication of the cases were on the merits and the same parties were involved in both actions. The only difference in the four cases is that Waite chose not to appeal this case when he appealed the other three cases.

3. The judgment of the District Court of Scotts Bluff County made September 5, 1991, was correct in all respects. The decisions and judgment of the Nebraska Court of Appeals in Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992) and Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 879 (1995), prove that beyond doubt. The doctrine of res judicata bars further litigation or relitigation of this case.

IT IS THEREFORE ORDERED that all motions, amended motions, objections and petitions for any relief whatsoever which were filed after September 5, 1991, are overruled and dismissed.

By the Court,

_____

Paul D. Empson
District Judge

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of HARRIET I. WAITE, Deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER	)	Case No. 38269 SUMMARY JUDGMENT

September 5, 1991

This matter came on for consideration by the Court having previously been taken under advisement.

Upon the evidence adduced, argument of counsel and briefs submitted, the Court finds as folows:

1. There is no genuine issue as to any material fact.

2. Defendants are entitled to judgment as a matter of law. See Back Acres Pure Trust v. Fahlander, 233 Neb. 28 (1989).

Summary judgment of dismissal is entered for the defendants and against the plaintiff. Plaintiff's action is dismissed.

BY THE COURT,

_____

Robert O. Hippe
District Judge

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	)	
vs.	)	ORDER
W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER	)	CASE NO 38269

Now on July 31, 1997, the same being one of the days of the regular term of this Court, a certain Mandate having been recieved from the Court of Appeals of the State of Nebraska,

IT IS THEREFORE ORDERED that the Mandate be spread upon the Journal of this Court, and its provisions be the order of this court.

By the Court,

_____
Robert O. Hippe
District Judge

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE HARRIET I. WAITE, Deceased	))))	NO. PR90-78 ORDER OF COMPLETE SETTLEMENT & DISTRIBUTION

The petition of Glenn R. Waite, Personal Representative and heir of decedent, filed herein, for a formal proceeding to adjudicate the final settlement and distribution of the above estate came on for hearing this this 15th day of May 1996 and the only person appearing was Glenn R. Waite; and

It appearing to the Court that on January 5, 1994 the Court entered a decree of heirship which named Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter; and as the sole and only heirs; and it is noted by the Court that Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate assets; leaving other possible persons to take the estate by representation through the heirs who have renounced their interests; and it appearing to the Court that Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec are granddaughters of the decedent and said persons having been notified pursuant to Neb. Rev. Stat. section 30-2220 (Cumm Supp. 1993); and said persons have not appeared in this matter, and any other persons have been notified by publication pursuant to Nebraska law,

It is hereby Ordered, Adjudged, and Decreed that the Court does approve the petition of Glenn R. Waite for final settlement and does approve his previous distributions of estate assets.

FILED May 15, 1996
SHERIDAN COUNTY COURT

Charles Plantz
County Judge

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE) NO. PR90-78
HARRIET I. WAITE, Deceased)

PETITION FOR FORMAL PROCEEDING TO ADJUDICATE THE FINAL SETTLEMENT AND DISTRIBUTION OF THE ESTATE

COMES NOW, Glenn R. Waite, Personal Representative of the estate and sole distributee by informal distribution, pursuant to Neb. Rev. Stat. section 30-24,115 (Reissue 1989), and moves this Court to enter an Order adjudicating the final settlement and distribution of the estate. Glenn R. Waite moves this Court to approve settlement and direct or approve distribution of the estate and discharge the personal representative from further claim or demand of any interested person.

The decedent left absolutely no debts and there were never any claims filed or brought against the personal representative. The time for filing any claims has long ago expired.

At this time the only interested person in the estate is Glenn R. Waite. Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate. Peter A. Waite has one other son by another marriage, and to my knowledge he is not an interested person in the estate; Doris R. Butler has two daughters and to my knowledge they are not interested persons in the estate. Beverly E. Sipple has three daughters and to my knowledge they are not interested persons in the estate.

On November 9, 1990, an application for informal appointment of personal representative in intestacy was filed. On November 9, 1990, Glenn R. Waite accepted his appointment as personal representative. On January 2, 1991, Glen Fiebig, County Judge, ordered the Clerk to issue letters of Personal Representative to Glenn R. Waite. The only estate assets were chose(s) in action involving negligence in the medical care of the decedent and chose(s) in action against attorneys who may have committed professional negligence. There is a claim for wrongful death which is not an asset of the estate, but rather an asset of the next of kin. On September 27, 1993, a renunciation of succession, affidavit and assignment were filed by Peter A. Waite. On September 28, 1993, a renunciation of succession, affidavit and assignment were filed by Doris R. Butler. On October 18, 1993, a renunciation of succession, affidavit and assignment were filed by Beverly E. Sipple. On October 18, 1993, Glenn R. Waite filed a petition for determination of heirship and succession. On November 29, 1993, the Personal Representative distributed to himself the

chose(s) in action involving a claim for negligence in the care and treatment of the decedent. On January 5, 1994, the Court adjudged that the decedent died intestate on April 17, 1989 and leaving surviving her as her sole and only heirs were Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter. On November 1, 1995, the personal representative informally distributed all estate assets to himself, individually, as the sole interested person in the estate. As informal sole distributee, Glenn R. Waite, individually, pro se, is presently prosecuting an action against Regional West Medical Center, Scottsbluff Internal Medical Group, and W. Scott Carpenter in the U.S. District Court for the District of Nebraska, case number 4:95CV-3447, involving a declaration of his individual rights and legal relation between him and the defendants as it regards cases 38270 and 38279 which were filed by the personal representative in the District Court of Scotts Bluff County and in which the Court has never rendered a final judgement which disposed of all claims and all parties. As personal representative, pro se, representating himself as the sole and only next of kin claiming wrongful death damages, Glenn R. Waite is prosecuting a motion to vacate judgment of dismissal pursuant to Neb. Rev. Stat. section 25-2001 et. seq. for irregularities and neglect of clerk which were not a result of his own neglect in case 38269 filed in the District Court of Scotts Bluff County. Glenn R. Waite's motion is still pending. As informal sole distributee, Glenn R. Waite, pro se, is prosecuting an appeal to a dismissed civil

rights action against Attorney Snowden and Judge Robert Hippe in the 8th U.S. Circuit Court of Appeals, case 95-3121. Lastly, Glenn R. Waite thru his attorney is prosecuting an action against attorneys who negligently prosecuted a suit on behalf of the personal representative, this is filed in the District Court of Lancaster County, Nebraska, case Docket 502, Page 170. All of the above actions are still pending.

WHEREFORE, Glenn R. Waite moves this Court to enter an order approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person in regard to estate assets after notice to any and all interested persons.

_____
Glenn R. Waite
Personal Representative
and sole distributee by
informal distribution
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

VERIFICATION:

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, first duly sworn upon his oath, makes the following statements based on personal knowledge:

I am the natural son of Harriet I. Waite. Harriet I. Waite died intestate and

left no debts. I am the duly appointed personal representative by order of this Court. I am the only interested person in the estate of my mother. I have made the foregoing petition based on personal knowledge and to the best of my knowledge and belief, the facts contained in the petition are true and correct.

_____
Glenn R. Waite

Subscribed and sworn to before me this the ___ day of March 1996.

_____
Notary Public

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE) NO. PR90-78
HARRIET I. WAITE, Deceased)

STATE OF NEBRASKA)
) ss.
COUNTY OF SHERIDAN)

Glenn R. Waite, being first duly sworn on oath, makes this Affidavit based upon personal knowledge and deposes and states as follows:

1. Affiant is the sole natural born son of Harriet I. Waite and was appointed personal representative of the above decedent on January 2, 1991. The affiant has no children. The affiant is a licensed physician in the states of Wyoming, Colorado, California, and Indiana. Affiant is Board Certified in Family Practice.

2. The sole and only assets of the above estate are:

A cause of action against Dr. William Scott Carpenter, Scottsbluff Internal Medicine Group, and Regional West Medical Center for negligence in the diagnosis and treatment of the decdent's leg weakness manifested as polymyositis.

A cause of action against Dr. Richard Savage for negligence in the diagnosis and treatment of the decedent's leg weakness and the decedent's chronic hyponatremia leaving the decedent totally paralyzed.

A cause of action against W. Scott Carpenter, Dr. Armando Mangana, Dr. William Packard, Dr. Terry Himes, and Regional West Medical Center for negligent treatment of the decedent's clinical central pontine myelinolysis.

A cause of action against Regional West Medical Center and Nancy Adams for battery negligence of administering intravenous morphine knowing the decedent had refused the medication.

A cause of action against Dr. Carpenter and Scottsbluff Internal Medicine Group acting as internal medicine consultants when the decedent was under the care of Dr. Richard Savage.

A cause of action against attorney Jim L. Brown for legal malpractice.

and there are no other assets of the above decedent known to the affiant. Any personal effects of the decedent were distributed among the heirs after decedent's death and prior to commencing any probate proceedings.

3. There is a wrongful death action against Dr. Carpenter, Dr. Terry Himes, Dr. Larry O'Holleran, Jana L. Haick, Donna Rusen, Judy Bowlin and Regional West Medical Center as joint tortfeasors and against Dr. Carpenter and Regional West Medical Center

as separate defendants. The action alleges that the defendants intentionally and maliciously caused the decedent's death. The wrongful death action is an asset of the next of kin and is being administered by this Court.

4. The following are pending actions connected with the above decedent:

Case numbers 38267, 38268, 38269, 38270, 38271, and 38279 filed in the District Court of Scotts Bluff County Nebraska. These cases are pending in regard to the individual rights of Glenn R. Waite.

Docket 502, Page 170, filed in the District Court of Lancaster County Nebraska.

Case 4:CV94-365 filed in the U.S. District Court of the District of Nebraska and is on appeal to the 8th Circuit Court of Appeals, case 95-3121NEL.

Cases 4:95CV3447 and 4:96CV3004 filed in the U.S. District Court of the District of Nebraska.

5. The causes of action for the negligence in the treatment and care of the decedent and for her wrongful death were undertaken in good faith and thoroughly investigated. The medical records were reviewed by 21 physicians besides myself. The actual value of these causes of action are unknown but estimated by some attorneys to be worth at least $200,000.

6. Affiant has personally paid for any and all expenses encountered with the administration of this estate, the court costs and litigation expenses of any and all causes of action connected with this estate or above decedent. No expenses have been paid by any other person other than Glenn R. Waite. The following is a list of the expenses:

8/25/90: check #157 for $100 to the clerk of this court for the probate proceeding.

8/25/90: check #158 to Ed Hollstein, attorney, for $250.

3/25/91: money order #43712081796 for $120 to the U.S. District Court.

4/05/91: money order #437120822268 for $205 to the Clerk of the District Court, Gering, NE.

4/10/91: money order #43712082336 for $41 to the Clerk of District Court, Gering, NE.

4/11/91: money order #43712082382 for $100 to the Sheriff Dept. Scotts Bluff County for service of summons.

6/2/91: Check #243 for $15.45 to the Sheriff's Dept. Scotts Bluff County, Nebrska for service ofsummons.

9/91: expenses of $959.71 to personally appear at hearing in Scotts Bluff County District Court.

9/16/91: check #298 for $320 to Attorney Alexnder Davison

9/23/91: draft check #31348 for $5000 to Dawson, Fleming, and Brown, attorneys at law.

10/14/91: check #308 for $52.25 to Lynn Pfortmiller, court reporter, Scotts Bluff County.

10/29/92: expenses to visit with attorney: motel expenses of $47.65 charged on credit card and mileage of 890 miles or 0.25 per miles or $222.50. Total of $ 270.15.

11/3/92: check #439 for $105 to Attorney William Blake.

11/7/92: check #441 for $1000 to Attorney William Blake.

1/25/93: check #460 for $300 to attorney Stanley Cohen.

7/7/93: check draft from credit union for $5000 to attorney Douglas DeLair.

12/22/93: legal newspaper expense of $24.53 to Sheridan County Star.

12/93: receipt #39899 for $22. from the clerk of this court.

1/5/94: expenses of trip to this Court for hearing - $114.50.

3/30/94: summons fee paid to Sheriff of Scotts Bluff County for $50.

5/2/94: check # 553 for $128 to clerk of the Dist. Court, Gering, NE.

5/2/94: check #554 for $128 to Clerk of the Dist. Court, Gering, NE.

5/17/94: check #561 for $128 to Clerk of Dist. Court, Gering, NE.

6/22/94: check # 570 for $30 to court reporter Lynn Pfortmiller.

6/22/94: check #571 for $208.50 to Clerk of Dist. Court, Gering, NE, for transcript.

7/13/94: check #602 for $4.79 to Clerk of Supreme Court for transcript fee.

7/13/94: check# 603 for $7 to Clerk of Supreme Court for transcript fee.

8/5/94: check #608 for $7.50 to Clerk of Dist. Court, Gering, NE for transcript fee.

8/31/94: summons fee of $25 paid ot Sheriff of Scottsbluff county.

10/28/94: summons fee of $25 to sheriff of Scotts Bluff County.

12/20/94: receipt #42436 for $22 from the clerk of this court.

3/18/96: receipt for cash of $20 from O'Brian, Huenergardt & Cook, Attorneys at law - legal expenses.

3/25/96: receipt #45809 for $22 from the clerk of this court.

4/91 to present: copy expenses related to court proceedings - $773.16.

4/91 to present: notary fees of $7.00 cash receipts.

4/91 to present: postage fees of $534.19.

TOTAL EXPENSES TO DATE: $16,119.73

7. On January 5, 1994, affiant appeared personally on behalf of himself in the hearing in which this Court determined that the only heirs of the above decedent were Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter. All heirs, except Glenn R. Waite, have renounced their interests to any and all of the decedent's assets.

8. The arrangement between the affiant and any and all heirs was that Glenn R. Waite would pay from his own funds any and all expenses to carry forward any litigation in connection with the estate, including survival and wrongful death action, and Glenn R. Waite would receive the benefits, if any, from such litigation.

9. On November 29, 1993, the affiant, as personal representative, distributed to himself, individually,the chose in action involving a claim for negligence in the care and treatment of the above decedent.

10. On November 1, 1995, the affiant, as personal representative, distributed to himself, individually, any and all property, real or personal, wherever situated; any and all causes of action, and any other estate assets, wherever situated. The affiant, as personal representative, fully distributed the estate to the person(s) entitled. The affiant, as personal representative, fully administered the estate of the decedent by making payment, if any, settlement or other disposition of all claims, if any, which were presented, expenses of administration and estate, inheritance and other death

taxes, if any, and fully distributing the estate.

11. On or about January 19, 1994, attorney James A. Snowden of Knudsen, Berkheimer, Richardson & Endacott sent a letter to Ms. Julie Krotz, County Court Magistrate. The letter was in reference to the above estate. Neither James A. Snowden **nor** any member of his law firm is an interested person in the above estate and **does not** represent any adult or minor child who are interested or potentially interested persons in the above estate.

12. Peter A. Waite has one son, Marvin Waite, by his first marriage to Mary Keethler. Marvin Waite is not a blood relative of the the above decedent and there was never any legal adoption of Marvin Waite by the above decedent. Marvin Waite is not an interested person in the above estate.

13. Beverly Sipple has three daughters and no sons. The three daughters are Wanda Sipple Hall, 322 D. Drive, Montgomery, Al 36108; Wendy Sipple, 1685 First Ave., Apt. 22, New York, N.Y. 10128; and WaLinda Sipple, 721 W. Melrose, Apt. 303, Chicago, IL 60657. Wanda Sipple Hall, Wendy Sipple, and WaLinda Sipple have no natural or adopted children. The above individuals have indicated that they have absolutely no interest in the above decedent's estate or assets. The above individuals are not claiming any rights by representation through any other heir. The above individuals never at any time relied on Glenn R. Waite, individually or as personal representative, to represent them in court proceedings in any action connected with the above decedent. The above individuals never at any time paid or advanced any money

whatsoever to provide court costs or legal expenses connected with any action brought by Glenn R. Waite and connected with the above decedent.

14. Doris Butler has two daughters and no sons. The two daughters are Michelle Warzecha, 168 Meadowlark Lane, Mellrose, MN 56352; and Shannon Kadlec, 11609 Lawrence Ave. N.W., Annandale, MN 55302. Michelle Warzecha and Shannon Kadlec had no natural or adopted children on April 17, 1989 when the decedent died. The above individuals have indicated that they have absolutely no interest in the above decedent's estate or assets. The above individuals are not claiming any rights by representation through any other heir. The above individuals never at any time relied on Glenn R. Waite, individually or as personal representative, to represent them in court proceedings in any action connected with the above decedent. The above individuals never at any time paid or advanced any money whatsoever to provide court costs or legal expenses connected with any action brought by Glenn R. Waite and connected with the above decedent.

15. Affiant, in accordance with section 30-2220 of the Neb. Rev. Stat. (Cumm. Supp. 1993), caused a notice of the time and place of hearing regarding his petition for a formal proceeding to adjudicate the final settlement and distribution of the estate to be given to:

Beverly E. Sipple, 1326 Rodderdam Circle, Colorado Springs, CO 80907 by ordinary first class mail, postage prepaid, which was mailed from Hugo, Colorado on April 25, 1996.

Doris R. Bulter, 9177 Duckwood Trail, Woodbury, MN 55125 by ordinary first class mail, postage prepaid, which was mailed from Hugo, Colorado on April 25, 1996. Marvin A. Waite, 945 'O' St., Hamilton, GA 31811 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Wanda Sipple Hall, 322 D. Drive, Montgomery, Al 36108 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Wendy Sipple, 1685 First Ave., Apt. 22, New York, N.Y. 10128 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

WaLinda Sipple, 721 W. Melrose, Apt. 303, Chicago, IL 60657 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Michelle Warzecha, 168 Meadowlark Lane, Mellrose, MN 56352 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

Shannon Kadlec, 11609 Lawrence Ave. N.W., Annandale, MN 55302 by ordinary first class mail, postage prepaid, which which was mailed from Hugo, Colorado on April 25, 1996.

16. There are no other potentially known interested persons in the above estate. Peter A. Waite died on March 13, 1995. His sole and only heirs are Marvin Waite, Beverly Sipple, Doris Butler, and Glenn R. Waite.

17. Affiant, in accordance with section 30-2220 of the Neb. Rev. Stat. (Cumm. Supp. 1993) caused a notice of the time and place of hearing regarding his petition for a formal proceeding to adjudicate the final settlement and distribution to be published in the Sheridan County Star, 209 S. Main St., Rushville, NE on from March 27, 1996 to April 10, 1996 for three consecutive weeks.

18. The above decedent died without leaving any debts and there were never any persons who filed any claims against the personal representative of the estate. There are absolutely no known creditors or potential creditors to the estate and it has been over three years since the estate was opened and the personal representative appointed.

FURTHER AFFIANT SAYETH NOT.

_____
Glenn R. Waite

Subscribe and sworn to before me this the ___ day of May 1996.

_____
Notary Public

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE) NO. PR90-78
HARRIET I. WAITE, Deceased)

LETTERS OF PERSONAL REPRESENTATIVE

THE STATE OF NEBRASKA
KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, On January 2, 1991, Glen R. Waite was appointed and qualified as Personal Representative of the above-named Decedent by this Court or its Registrar, with all the authority granted to a personal representative by law.

NOW, THEREFORE, these Letters are issued as evidence of such appointment and qualifications and authority of Glen R. Waite to do and perform all acts which may be authorized by law.

WITNESS, the signature of a Judge or Registrar of this Court, and the seal of this Court on January 2, 1991.

FILED
January 2, 1991
SHERIDAN COUNTY COURT

_____
Julie Krotz
Registrar of the
County Court of
Sheridan County,
Nebraska

IN THE COUNTY COURT
OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE) NO. PR90-78
HARRIET I. WAITE, Deceased) CERTIFICATE

This hereby certifies that this Court is the Court of Record in the above case and that this Court maintains the Custody of the Records in this case. The record in this case does not contain any Order discharging the Personal Representative. The undersigned certifies that the letters of Personal Representative issued January 2, 1991 are still in effect.
Dated 11 October 1996

_____
Charles Plantz
County Judge

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendants.	)	No. 38269 **AMENDED MOTION TO VACATE JUDGMENT OF DISMISSAL**

COMES NOW, Petitioner, Glenn R. Waite, individually, Personal Representative of Harriet I. Waite, deceased, by order of the County Court of Sheridan County, Nebraska, on January 2, 1991, heir of the decedent Harriet I. Waite by decree of the County Court of Sheridan County, Nebraska, on January 5, 1994, and sole distributee of the estate of Harriet I. Waite by court proceedings in the County Court of Sheridan County, Nebraska, and representing only his own individual rights hereby files his amended motion to vacate the judgment of dismissal entered September 5, 1991 by claiming violation of his U.S. Constitutional rights. Petitioner, on the following grounds, moves this Court to vacate the judgment of dismissal:

(1) the judgment of dismissal was rendered by Judge Robert O. Hippe whose wife, Anne Hippe, was employed as a registered nurse by the defendant, Regional West Medical Center a/k/a West Nebraska General Hospital or its affiliates, University of Nebraska Medical Center College of Nursing and Western Nebraska

Community College School of Nursing, on September 3, 1991 when Judge Hippe heard arguments at a joint hearing with Judge Alfred Kortum in cases 38267, 38268, and 38271, and on September 5, 1991 when Judge Hippe signed the order dismissing this case all done in violation of Neb. Rev. Stat. section 24-739 (Cumm. Supp. 1992), article I, section 3 of the Nebraska Constitution, and the 14th amendment to the U.S. Constitution.

(2) this court lacked personal and subject-matter jurisdiction on September 3 and September 5, 1991 to determine the individual rights of Glenn Ronald Waite, heir of the decedent, Harriet I. Waite, resident of the State of California and citizen of the United States (such individual rights being distinct from his rights as personal representative of the decedent) because this Court failed to give him notice regarding his individual rights as required by Neb. Rev. Stat. section 30-2220 (Cumm. Supp. 1993), failed to bring him into Court in his individual capacity as required by Neb. Rev. Stat. section 25-323 (Reissue 1989) and failed to bring all persons into Court whose rights would be affected by the Court's decision all done in violation of Neb. Rev. Stat. section 25-323 (Reissue 1989), Article I, section 3 of the Nebraska Constitution, Article IV, section 2 of the U.S. Constitution, and the 14th amendment to the U.S. Constitution.

This Court has jurisdiction of this Motion (1) under Nebraska law which authorizes any court the inherent jurisdiction to vacate its own void judgment at any time in any direct or collateral proceeding and (2) under federal law

pursuant to Article VI, section 2, of the U.S. Constitution and the 14th amendment to the U.S. Constitution.

Petitioner requests a hearing which would allow him to present evidence to prove that this Court violated his U.S. Constitutional rights under the 14th amendment. Petitioner requests that this Motion be heard before a Judge other than Judge Hippe because he has a pecuniary interest in the cause of action and other than Judge Alfred Kortum because he knew of Judge Hippe's disqualification of which such knowledge came to him from sources outside the court records or proceedings and who is unable to render an impartial judgment in compliance with the 14th Amendment to the U.S. Constitution because of his ex parte knowledge in the case.

Petitioner has attached to this motion his own affidavit.

WHEREFORE, Petitioner, Glenn R. Waite, individually, prays that this court vacate its judgment of dismissal dated September 5, 1991 because such judgment was rendered in violation of the 14th amendment to the U.S. Constitution and works a substantial injury to his individual rights as heir of decedent, Harriet I. Waite. Petitioner prays that this court will grant him a hearing in this matter before a Judge other than Judge Hippe or Judge Kortum because Petitioner cannot obtain an impartial decision if such matter comes before Judge Hippe or Judge Kortum.

_____

Glenn R. Waite
Petitioner
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendants.	)	No. 38269 **AFFIDAVIT OF GLENN R. WAITE**

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, first duly sworn on oath, makes this affidavit based on personal knowledge, and deposes and states as follows:

1. Affiant is the natural son of Harriet I. Waite, is heir of decedent by decree rendered January 5, 1994 in the County Court of Sheridan County, Nebraska, and is the sole distributee of all estate assets pursuant to a document dated November 1, 1995 and filed in the County Court of Sheridan County, Nebraska. Affiant represents himself only and represents the rights of no other person other than himself in case number 38269.

2. Affiant states that Harriet I. Waite died intestate on April 17, 1989 and was survived by a spouse and three adult children. All heirs, except himself, have filed an irrevocable renunciation of succession with the clerk of the Sheridan County probate court. There are no persons, other than Glenn R. Waite, who have ever claimed any rights to the decedent's assets

or rights to a wrongful death action.

3. Affiant states that the decedent, Harriet I. Waite, died without any debts or liabilities and at this time there are no debts or liabilities against the estate and the time to file any claims expired three years after decedent's death.

4. Affiant states that he was personally present at the hearing held September 3, 1991 in his capacity as personal representative with a duly licensed attorney who represented only the personal representative in his official capcity and who entered a general appearance for the personal representative. The personal representative's attorney did not enter an appearance for Glenn R. Waite, heir of decedent, in his individual capacity. Prior to September 5, 1991, the Court did not send any notice to Glenn R. Waite, individually as heir of decedent, and did not serve any process upon him in his individual capacity as heir of decedent in case 38269 in regard to the material issues presented at the September 3, 1991 hearing.

5. Affiant states that he was present at the January 7, 1994 hearing in case no. 38270 around 8 AM and at that hearing he personally heard Judge Robert O. Hippe state that his wife was a former employee of Regional West Medical Center and was a present employee of the Western Nebraska Community College School of Nursing which is an affiliate of Regional West Medical Center a/k/a West Nebraska General Hospital. Judge Alfred Kortum was not present at that hearing. Around 10 AM on January 7, 1994, affiant went to the office of Judge Kortum with the purpose of requesting a new hearing since the case had been reassigned to him.

Judge Kortum and Darlene Weimer were in the office. Darlene Weimer asked Judge Kortum what the problem was [in regard to the case being reassigned]. Judge Kortum stated that Judge Hippe was complaining that his wife's employment was causing a problem.

6. Affiant states that prior to January 18, 1994, there had been absolutely no documents filed nor any discussion in court proceedings in cases 38267, 38268, and 38271 [cases assigned to Judge Kortum] indicating that Judge Hippe had a pecuniary interest in the cases or that Judge Hippe's wife was presently or previously employed by any of the defendants.

7. Affiant states that prior to November 18, 1993 when he received written information from the Whelan Detective Agency regarding Anne Hippe's employment, he had no direct personal knowledge of the employment of Anne Hippe, wife of Judge Robert O. Hippe, on September 3, 1991 by Regional West Medical Center a/k/a West Nebraska General Hospital or by it affiliates University of Nebraska Medical Center College of Nursing and Western Nebraska Community College School of Nursing.

FURTHER AFFIANT SAYETH NOT.

_____
Glenn R. Waite

Subscribed and sworn to before me this the _____day of _____1995.

_____
Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendants.	)	No. 38269 **THIRD AMENDED PETITION** **JURY TRIAL DEMANDED**

COMES NOW, Plaintiff, Glenn R. Waite, Personal Representative representing himself as the sole next of kin claiming damages, to amend his petition pursuant to section 25-849 of the Neb. Rev. Stat. (Reissue 1995) in that all defendants have not filed a responsive answer pursuant to section 25-811 of the Neb. Rev. Stat. (Reissue 1995). This action was originally filed April 8, 1991. On September 5, 1991, a motion for summary judgment was sustained in favor of defendant Carpenter. The only issue decided was whether there was any genuine issue as to any material fact whether the pleadings filed by plaintiff were a nullity. However, such judgment is void under the 14th amendment to the U.S. Constitution because Judge Hippe's wife, Anne Hippe, has a financial interest in the results of this suit since Anne Hippe is a nursing instructor and the Chairsperson of the practical nursing program which is a joint program of Regional West Medical Center and Western Nebraska Community College. Practical Nursing Students, including Rebecca Bartlett, caused damage to Harriet

Waite and such damage is imputable to Anne Hippe as Instructor and Chairsperson of the practical nursing program. The motion to strike pleadings and to dismiss filed by Regional West Medical Center, on July 19, 1991, has never been heard or disposed of by the Court at any time and was not heard on September 3, 1991. This Court and defendant, Regional West Medical Center, have never, at any time, converted the defendant's motion to strike pleadings and to dismiss into a motion for summary judgment. There has been no trial on the merits of the cause of action.

Plaintiff alleges his causes of action against the above defendants as follows:

FIRST CAUSE OF ACTION

1. Plaintiff, Glenn R. Waite, is the duly appointed and qualified Personal Representative of his deceased mother, Harriet I. Waite, and is sole heir at law of the decedent's estate under intestate succession pursuant to the Order of Complete Settlement and Distribution dated May 15, 1996 in the county court of Sheridan County, Nebraska. A true copy is attached hereto as exhibit 1. Plaintiff represents himself in this action, is the only real party in interest and represents the interests of no other person or entity other than himself. Plaintiff resides at 1202 W. 28th St., Cheyenne, WY 82001.

2. Harriet Ione Waite died intestate on April 17, 1989 due mainly to large doses of morphine under the care of the defendants. Intestate at the time of death resided at Hay Springs, Nebraska, County of Sheridan.

3. Plaintiff, Glenn R. Waite, is bringing this action as Personal Representative of his deceased mother, Harriet I. Waite, for the wrongful act of the defendants which resulted in death and if death had not ensued it would have entitled Harriet Waite to maintain this action against the defendants. The amount recovered is for the benefit of the Plaintiff, Glenn R. Waite, as sole next of kin under intestate succession pursuant to Court Order, as provided by law in relation to the distribution of personal property left by decedent who died intestate under the provisions of the Lord Campbell Act and sections 25-809, 25-810 of the Neb. Rev. Stat. (Reissue 1995).

4. The District Court of Scotts Bluff County is the proper court in that the controversy involves relief for a sum greater than $10,000. Venue is proper in that the cause of action occurred in Scotts Bluff County and the defendants provided goods and services in Scotts Bluff County, Nebraska.

5. Defendant, W. Scott Carpenter, M.D., was a physician licensed under the laws of the State of Nebraska and was a physician practicing in partnership with other physicians at Scottsbluff Internal Medicine Group, P.C., Two West 42d Ave., Scottsbluff, NE 69361 at all times in reference to this cause of action. Other physicians in partnership at the time of this cause of action were: Todd S. Sorensen, M.D., William A. Siefert, M.D., Terry L. Haney, M.D., William M. Packard, M.D., Vince G. Bjorling, M.D., and Armando J. Mangana, M.D. Defendant, Carpenter, is Board Certified in Internal Medicine.

6. Defendant, Jama Houck, R.N. was employed by defendant, Regional West Medical Center, in the capacity of registered nurse at all times in reference to this cause of action. Jama Houck, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

7. Defendant, Donna Rusen, R.N., was employed by defendant, Regional West Medical Center, in the capacity of registered nurse at all times in reference to this cause of action. Donna Rusen, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

8. Defendant, Judy Bowlin, L.P.N., was employed by defendant, Regional West Medical Center, in the capacity of licensed practical nurse at all times in reference to this cause of action. Judy Bowlin, L.P.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

9. Linda Moreno, R.N. was employed by the defendant, Regional West Medical Center, in the capacity of registered nurse at all times in reference to this cause of action. Linda Moreno, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

10. Nancy Adams, R.N. was employed by defendant, Regional West Medical Center, in the capacity of registered nurse at all times in reference to this cause of action. Nancy Adams, R. N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

11. Marlene H. McKeown, R.N. was employed by defendant, Regional West Medical Center,

in the capacity of registered nurse at all times in reference to this cause of action. Marlene H. McKeown, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

12. Defendant, Regional West Medical Center a/k/a Western Nebraska General Hospital, is an acute care general hospital licensed under the laws of the State of Nebraska and was accredited by the Joint Commission on Accreditation of Health Care Organizations at all times in reference to this cause of action. Regional West Medical Center was affiliated with Western Nebraska Community College of Scottsbluff, Nebraska, at all times in reference to this cause of action. Anne Hippe, wife of Judge Robert O. Hippe, was instructor or director of the Practical Nursing Program, at Western Nebraska Community College at all times in reference to this cause of action. Western Nebraska Community College is owned by the State of Nebraska. The actions of the practical nursing students who caused negligence to Harriet Waite are imputable to Anne Hippe as instructor and director of the practical nursing program. Defendant's address is 4021 Avenue B., Scottsbluff, NE 69361.

13. On April 2, 1989, Harriet I. Waite was admitted to Regional West Medical Center under the care of William Packard, M.D. and W. Scott Carpenter, M.D. From April 2, 1989 to April 17, 1989, Glenn R. Waite, M.D. acted as Harriet Waite's agent and signed the admission contract on her behalf since she had recently become paralyzed as a result of Dr. Carpenter's and Dr. Savage's negligence [though not known at the time of admission] and could not write.

14. Harriet Waite was known to be of sound mind and prior to death, had the capacity to communicate and make her own medical decisions.

15. On or about July 25, 1985, Harriet Waite consulted Dr. Terry Haney, M.D., a physician member of the Scottsbluff Internal Medicine Group, P.C. Thereafter Harriet Waite was referred to defendant, W. Scott Carpenter, M.D. for ongoing treatment of arthritis and hypertension. Defendant, Carpenter, was her primary care physician from October 1985 until the date of her death on April 17, 1989.

16. From April 2 to April 17, 1989, Harriet Waite was cared by Rebecca Bartlett, Student Practical Nurse of the Western Nebraska Community College. Anne Hippe, wife of Judge Hippe, was at all times in reference to this cause of action an instructor or director of the Practical Nursing Program at Western Nebraska Community College. Rebecca Bartlett, S.P.N., acted within within the scope of their employment and student duties and therefore her negligent conduct was imputable to the defendant, Regional West Medical Center and affiliate, Western Nebraska Community College, under the doctrine of respondeat superior. Rebecca Bartlett, S.P.N., recorded choking episodes or difficulty taking fluids, food or medication by Harriet Waite. Rather than stop all food and protecting Harriet Waite from further aspiration events, Rebecca Bartlett, S.P.N., negligently cared for Harriet Waite by continuing to give intestate fluids, food or medications knowing that intestate could have further aspiration events and that such further aspiration events could contribute

to Harreit Waite's death. As a direct and proximate result of Student Bartlett's negligence, Harriet Waite sustained injury in the form of further recurrent aspiration events and worsening of her aspiration pneumonia with increased difficulty breathing which directly contributed to her death due to morphine overdose.

17. On April 2, 1989, Harriet Waite was admitted to Regional West Medical Center for treatment of two conditions: (1) slowly progressive lower extremity weakness [polymyositis] and (2) recent neurological changes with upper extremity paralysis, facial paralysis, laryngeal dysphagia and recurrent aspiration pneumonia as a result of rapid correction of chronic hyponatremia [central pontine myelinolysis]. Harriet Waite had absolutely no terminal illness and could have lived a normal expectancy had she survived. While under the care of William M. Packard, M.D. and W. Scott Carpenter, M.D. Harriet Waite died. The cause of death was mainly from excessive doses of morphine. Negligent treatment of recurrent aspiration pneumonia and withdrawal of fluid and food may have directly contributed to Harriet Waite's death by reducing the amount of morphine required to kill her.

18. On or about April 4, 1989 after meeting defendant, Carpenter, for the first time, defendant, Carpenter, requested me (Glenn R. Waite, M.D.) to discuss cardio-pulmonary resuscitation with my mother, Harriet Waite. I agreed to do this and in fact did discuss cardio-pulmonary resuscitation with my mother, Harriet I. Waite. She mentioned that she had studied cardio-pulmonary resuscitation in her nurses aide course. She requested that everything

possible to be done that could be done in treatment of her condition. I asked her if that included cardio-pulmonary resuscitation and she said, "yes" and asked me that the information be communicated to Dr. Carpenter. I did this in the presence of my sister, Beverly Sipple, [Harriet Waite's daughter]. As a result of the conversation, defendant, Carpenter, then recorded in the medical record of Harriet I. Waite, "she requests full code".

19. From April 2, 1989 to April 17, 1989, Defendant Carpenter attended to the care of Harriet Waite who suffered from polymyositis and from central pontine myelinolysis which included recurrent aspiration pneumonia. Defendant, Carpenter, was required to exercise the reasonable and ordinary care, skill and ability in attending to the care of Harriet Waite. Defendant Carpenter failed to treat Harriet Waite's medical conditions known as polymositis and central pontine myelinolysis which included recurrent aspiration pneumonia according to the reasonable and ordinary care, skill and ability of other primary care physicians.

20. On April 13, 1989, Defendant, Carpenter, gave a telephone order to Linda Moreno, R.N. and Nancy Adams, R.N. for a "no code order". This means do not treat this patient with cardio-pulmonary resuscitation. This order was made without Harriet Waite's authorization or informed consent and directly against her prior recorded advanced directive. Harriet Waite was of sound mind and capable of making her own medical decisions. Harriet Waite had a right to self determination under federal law and defendants, Carpenter, Moreno, and Adams

failed to respect her right. Violating Harriet Waite's right of self determination and not obtaining her informed consent resulted in proximate injury to the Harriet Waite. Defendants, Carpenter, Moreno, and Adams, did not inform me (Glenn R. Waite, M.D.) that they had made the Harriet Waite a "no code" patient in order that I might protect my mother from harm. Defendants, Carpenter, Moreno, and Adams, were required to exercise the reasonable and ordinary care, skill, and ability ordinarily exercised by other health care providers in the same or similar circumstances. Defendants, Carpenter, Moreno, and Adams, failed to treat subject in a skillful, diligent manner and as a result of their negligent treatment, Harriet Waite became a "no code" patient without her informed consent causing her not to be revived as a result of a morphine overdose caused by defendants, Carpenter, Adams, and Mount, and other defendants. The negligence of defendants, Moreno, Adams, and Mount, were directly imputable to defendant, Regional West Medical Center, under the doctrine of Respondeat Superior.

21. On April 14, 1989, Defendant, Carpenter, ordered a continuous intravenous infusion of morphine without Harriet Waite's permission or informed consent. Harriet Waite was of sound mind and capable of making her own medical decisions. Harriet Waite had a right to self-determination under federal law and defendant, Carpenter, failed to respect that right. Lack of informed consent resulted in proximate injury to Harriet Waite. This treatment was contraindicated since it would make Harriet Waite's underlying condition (recurrent

aspiration pneumonia) worse. The morphine was administered in such a manner in which the doctors and nurses controlled the doseage without regard to Harriet Waite's wishes or pain level. This represented negligent treatment. Defendant, Carpenter, was required to exercise ordinary and reasonable care, skill, and ability ordinarily exercised by other physicians in the same or similar circumstances. Defendant, Carpenter, failed to perform his professional duties in a skillful diligent manner. Defendant, Carpenter, by due diligence failed to inform me, Glenn R. Waite, M.D., that he had ordered a continuous morphine infusion where the doctors and nurses control the doseage without regard to Harriet Waite's wishes or pain level and where he had given her morphine against her expressed wishes. Had defendant, Carpenter, informed me, I could have protected my mother from harm. The negligent acts of defendant, Carpenter, directly resulted in injury to Harriet Waite thus causing her death.

22. On April 14, 1989, Harriet Waite was a victum of tortious conduct perpertrated by Nancy Adams, R.N. while acting within the scope of her employment duties at Regional West Medical Center. Nancy Adams, R.N. while attending to the care of Harriet Waite was observed to administer a continuous morphine infusion to her knowing that she had refused the medication. Harriet Waite was of sound mind and capable of making her own medical decisions. Harriet Waite had a right to self-determination under federal law and nurse Adams failed to respect this right. Nancy Adams, R.N., in the course of her

employment duties, failed to exercise her duties in a skillful diligent manner. At the time of the tortious act, Nancy Adams, R.N. was acting within the scope of her employment duties and therefore her tortious acts are imputable to the defendant, Regional West Medical Center, under the doctrine of Respondeat Superior.

23. On April 15, 1989, defendant, Carpenter, ordered Harriet Waite's feeding tube to be discontinued and failed to provide Harriet Waite with adequate food and water support for 2 days prior to death. Food and water support was definitely needed to sustain the life of the intestate. This withdrawal of food and water support was without Harriet Waite's permission or authorization who was competent to make her own medical decisions. Harriet Waite had a right to self-determination under federal law and defendant, Carpenter, failed to respect that right. Lack of informed consent resulted in proximate injury to intestate. Withdrawal of fluid and food produced dehydration and made the morphine stay in intestate's body for longer periods of time thus causing a morphine overdose. Defendant, Carpenter, failed to perform his professional duties in a skillful diligent manner. By due diligence, defendant, Carpenter, failed to inform me, Glenn R. Waite, M.D., that he had withdrawn all forms of nutritional support. Had defendant, Carpenter, informed me, I could have protected my mother from harm. As a direct result of the negligent acts of defendant Carpenter, Harriet Waite sustained hunger and thirst and injury leading to death.

24. On April 15, 1989, during the course of her employment duties at Regional

West Medical Center, Marlene McKeown, R.N., attended to the care of Harriet Waite and withdrew food and water support from her without her informed consent. Harriet Waite had a right to self-determination under federal law and defendant, McKeown, failed to respect that right. Nurse McKeown failed to perform her duties in a skillful manner. As a direct result of nurse McKeown's negligence Harriet Waite became dehydrated and weak from lack of fluids and food. This made the morphine stay in intestate's body for longer periods of time resulting in morphine overdose. At the time of the tortious act, Marlene McKeown, R.N., was acting within the scope of her employment duties and therefore her tortious act was imputable to defendant, Regional West Medical Center, under the doctrine of Respondeat Superior.

25. On April 16, 1989 and April 17, 1989, Harriet Waite showed signs of morphine overdoseage such as hypotension, sedation and unresponsiveness, and apnea. Harriet Waite was attended by defendants, Carpenter, Houck, Rusen, and Bowlin. Each defendant committed acts of nonfeasance by failing to take appropriate action to treat Harriet Waite's signs of morphine overdoseage. Each of the defandants failed to perform their duties in a skillful prudent manner. As a direct result of each defendant's negligence, Harriet Waite sustained injury leading to death.

26. On April 16, 1989 and April 17, 1989 and at other times pertinent to this action, Jama Houck, R.N., Donna Rusen, R.N., and Judy Bowlin, L.P.N. who committed the tortious acts as described in paragraph 25 above, were each and all employees of

defendant, Regional West Medical Center. At the time of these tortious acts, Jama Houck, Donna Rusen and Judy Bowlin were acting within the scope of their employment duties and their tortious acts are therefore imputable to defendant, Regional West Medical Center, under the doctrine of Respondeat Superior.

27. On April 17, 1989, at approximately 2:00 PM, defendant, Carpenter, was observed to mechanically increase the rate of infusion of morphine at the same time Harriet Waite was having signs of morphine overdoseage such as hypotension, unresponsivess to verbal and painful stimuli and periods of apnea of greater than 30 seconds. Defendant, Carpenter, at 1345 hours had recorded signs of morphine overdoseage in the medical record and discontinued respiratory therapy and antibiotics. Defendant, Carpenter, was required to exercise the skill and care of other physicians in a similar situation. Defendant, Carpenter failed to exercise the skill and care of regularly practicing physicians. This tortious act of mechanically increasing the rate of infusion of morphine was a specific, deliberate, and direct intent to kill Harriet Waite. Defendant, Carpenter, demonstrated gross lack of competency and gross inattention to the intestate's safety with a mind reckless of social duty, disregard for human life, and hardness of heart. Defendant, Carpenter, along with Dr. Savage, had previously damaged Harriet Waite at Chadron Community Hospital by rapidly correcting her chronic hyponatremia and had a financial incentive to kill Harriet Waite. Had Harriet Waite not been killed by Dr. Carpenter and lived

out her normal expected life span, then Dr. Carpenter would have had to pay more money as a result of the damages sustained to Harriet Waite while at Chadron Community Hospital. Furthermore, the State of Nebraska law that there are no punitive damages in civil cases could have provided a financial incentive to kill Harriet Waite because if a patient is damaged it encourages the actor to allow the person to die or kill the person because he will not be faced with punitive damages and physicians are rarely prosecuted for murder in the care of patients. As a result of this tortious act, Harriet Waite turned blue gasping for air and died a painful death. No resuscitation attempts were made. Dr. Carpenter failed to report the death as a coroner's case.

28. On April 17, 1989, Donna Rusen, R.N. while attending to care of Harriet Waite and during the course of her employment duties observed defendant, Carpenter, to mechanically increase the rate of infusion of morphine at the same time the Harriet Waite was having signs of morphine overdoseage. Donna Rusen, R.N. failed to perform her nursing profession in a skillful, diligent and prudent manner by failing to protect Harriet Waite from the harmful acts of defendant, Carpenter, as required by the nursing code of ethics. This tortious act was a specific direct intent to allow Harriet Waite to die. Donna Rusen, R.N. demonstrated gross lack of competency and gross inattention to the intestate's safety with a mind reckless of social duty and disregard for human life. As a proximate and direct result of nurse Rusen's nonfeasance, Harriet Waite became blue, gasping for air and died a painful

death. Donna Rusen, R.N. failed to perform cardio-pulmonary resuscitation and this would have easily corrected the morphine overdoseage and saved Harriet Waite's life. Donna Rusen, R.N. at the time of the tortious act, was an employee of defendant, Regional West Medical Center, and acting within the scope of her employment duties and therefore her tortious acts were imputable to the defendant, Regional West Medical Center, under the doctrine of Respondeat Superior. Donna Rusen, R.N. failed to report the death as a coroner's case.

29. Harriet Waite had expressed a desire to live and stated she wanted everything possible to be done that could be done to save her life and did not, in any way, contribute to her own death.

30. The defendants demonstrated gross lack of competency, gross inattention and wanton indifference for the safety of Harriet Waite and manifested a reckless disregard for human life as set forth above.

31. As a direct and proximate result of the above-described wrongful acts of the defendants, Harriet Waite suffered multiple injuries resulting in her death on April 17, 1989.

32. At the time of her death, Harriet Waitet had a life expectancy of 13 years, and was 71 years old when she died.

33. By reason of the death of Harriet Waite, her sole surviving son has been deprived of Harriet Waite's support, comfort, society, counsel and services. Intestate's estate has been deprived of approximately $50,000, the present value of the accumulations that the intestate would have made to her estate had she lived out her life expectancy.

34. As exhibit 2, Plaintiff has attached to this petition the affidavit of Colleen E. Nash.

SECOND CAUSE OF ACTION

35. Plaintiff incorporates by reference the allegations of paragraphs one through thirty-four of the first cause of action of this petition as if fully set forth herein.

36. This is a civil action under the common laws of the State of Nebraska. Jurisdiction and venue is proper since the defendants committed the alleged fraud within Scotts Bluff County, Nebraska. This is the proper court sine the damages against the defendants are alleged to be greater than $10,000.

37. As set forth in paragraph 18, above, defendant Carpenter, requested me (Glenn R. Waite, M.D.) to discuss cardio-pulmonary resuscitation with my mother. I agreed to do this and in fact did discuss cardio-pulmonary resuscitation with my mother, Harriet I. Waite. Harriet Waite mentioned that she had studied cardio-pulmonary resuscitation in her nurses aide course. She requested that everything possible to be done that could be done in treatment of her condition. I asked her if that included cardio-pulmonary resuscitation and she said, "yes" and asked that the information be communicated to Dr. Carpenter. I then comunicated this information to defendant, Carpenter. Dr. Carpenter recorded in Harriet Waite's medical record the following: "She [Harriet Waite] requests full code". Harriet Waite did not change her mind prior to death. Defendant, Carpenter, made representations to me (Glenn R. Waite, M.D.) that he would

respect Harriet Waite's rights of self-determination by providing her with cardio-pulmonary resuscitation and food and water as she requested. On April 13, 1989, as set forth in paragraph 20, above, defendant, Carpenter, gave a telephone order to Linda Moreno, R.N. and Nancy Adams, R.N. for a "no code order". This means do not treat this patient with cardio-pulmonary resuscitation. As set forth in paragraph 28, above, Harriet Waite was not provided with cardio-pulmonary resuscitation. Then, on April 14, 1989, as set forth in paragraph 23, above, defendant, Carpenter, ordered Harriet Waite's feeding tube to be discontinued and failed to provide her with adequate food and water support for 2 days prior to death. On April 14, 1989, Marlene McKeown, R.N., withdrew Harriet Waite's food and water. The prior representations made to Glenn R. Waite, M.D. by the defendants turned out to be false. These false representations were not discovered by Glenn R. Waite until May 1989 (after Harriet Waite's death) when he reviewed the medical records. Defendant, Carpenter, knew the representations made to Glenn R. Waite, M.D. were false at the time he cared for Harriet Waite. Glenn R. Waite, M.D. reasonably relied on the representations made by defendant, Carpenter, and as a result of the reliance, Glenn R. Waite, M.D. directly suffered damages by the death of his mother, Harriet Waite.

WHEREFORE, Plaintiff prays for a judgment against the defendants for the wrongful death of Harriet I. Waite to be awarded to the next of kin who is the plaintiff himself, individually, as decedent's natural born son and sole heir at

law under intestate succession pursuant to a Court Order by the County Court of Sheridan County, Nebraska, on May 15, 1996, as follows:

1. General damages for pecuniary losses at the maximum allowable sum per statute.

2. Special damages for malicious acts and bad faith. demand is made for two million dollars.

3. Funeral expenses and grave marker expenses.

4. Costs of this action and such further relief as may be proper.

5. Interest is demanded and is to be calculated from April 17, 1989 and onward until judgment by this court.

6. Demand is made for a jury to hear this case.

On the second cause of action, plaintiff, Glenn R. Waite, prays for a judgment in his favor and against the defendants as follows:

1. General damages as to be determined by this Court.

2. Special damages in the sum of $50,000.

3. Demand is made for a jury to hear this case.

4. Costs of this action and such further relief as may be proper.

5. Interest is demanded and is to be calculated from April 13, 1989 and onward until judgment of this Court.

_____

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

VERIFICATION:

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite , first fully sworn upon oath, deposess and states that he is the duly appointed, qualified, and acting Personal Representative of his deceased mother, Harriet I. Waite, and the sole heir at law under intestate succession and is the Plaintiff in this action and that he represents the interests of no other person besides himself. Plaintiff states that he has read the petition and knows the contents and states that the facts therein are true to the best of his knowledge. He, as a physician, has personally reviewed the medical records of Harriet I. Waite in addition to other physicians.

_____
Glenn R. Waite

Subscribed and sworn to before me this the _____ day of _____1996.

_____
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing THIRD AMENDED PETITION to be served upon James A. Snowden, 1000 NBC Center, Lincoln, NE 68508; Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; and Don Stenberg, Nebraska Attorney General, 2115 State Capitol Building, Lincoln, NE 68509-8920 by Certified U. S. Mail this the ___day of _____ 1996.

_____
Glenn R. Waite

ASSIGNMENT OF ERRORS AND ISSUES PERTAINING TO ERRORS

(1) The District Court erred in finding that "Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska." (T102) and as a result (1) violated Waite's U.S. Constitutional right of access to the courts by ordering that if any further pleadings are filed by Mr. Waite "pro se", the clerk of court was to report such activity to the county attorney (T102) so that Waite could be punished for having exercised his U.S. Constitutional right to seek judicial relief in this action or proceeding which affects his individual rights and (2) violated Waite's U.S. Constitutional right of access to the courts by using Neb. Rev. Stat. section 7-101 (Reissue 1991) (T92) which is repugnant to and violates Article IV and the 1st, 5th and 14th Amendments to the U.S. Constitution because it allows a state Judge to make a determination of the fact issue of whether Waite who signed the pleadings in this action is in fact a "party to the action or proceeding" **without** first providing him with a proper notice and the opportunity for a hearing before an impartial decision maker on this fact issue. **Issues:** May a state court take a retaliatory action against Waite designed either to punish him for having exercised his U.S. Constitutional right to seek judicial relief or to intimidate or chill his exercise of that right in the future without first complying with Article IV, section 2, and the 1st, 5th, and 14th Amendments to the U.S. Constitution? May a state court make or enforce any law which abridges the privileges or immunities of citizens of the

United States or which deprives a person of due process of law by a process which considers the defendant's motion for summary judgment of dismissal (T11), provides a partial or biased decision maker in violation of the U.S. Constitution at the hearing on the defendant's motion (T46), and then when the person discovers the district court's financial interest and files his motion to vacate the void judgment (T40) and claims that the court violated his U.S. Constitutional rights, then the court determines that the person persists in acting as an attorney, although he is not admitted to practice in Nebraska (T102) and has no right to represent himself on his individual rights as personal representative and on his individual rights as the sole distributee of the estate of Harriet I. Waite, deceased?

(2) The District Court erred in denying Waite's motion for new trial on the issue of Res Judicata and erred in finding that the court's order on October 3, 1996 was and is correct in all respects (T101) because (1) pursuant to U.S. Supreme Court precedent, Res Judicata is no defense where, between the time of the first judgment and the second action, there has been an intervening judicial decision or change in the law, creating an altered situation, (2) the personal representative cannot sue or be sued in his representative capacity although he may sue or be sued in his individual capacity after the county court has entered its order of complete settlement and distribution pursuant to Neb. Rev. Stat. section 30-24,115 (Reissue 1995), and (3) Waite, a non-resident of Nebraska, has a right of access to the courts under the U.S.

Constitution and has a right to represent himself or defend himself without an attorney on his own personal rights as personal representative and his own personal rights as sole distributee of the decedent's estate pursuant to Neb. Rev. Stat. section 7-110 (Reissue 1991), the same right extended to citizens of Nebraska. **Issues:** Is Res Judicata applicable where, between the time of the first judgment and the second action, there has been an intervening judicial decision or change in the law which creates an altered situation? Does Waite have a right of access to the courts under Article IV and the 1st, 5th, and 14th Amendments to the U.S. Constitution and under Neb. Rev. Stat. section 7-110 (Reissue 1991) on his own causes of action? As a matter of law, can a personal representative be sued in his representative capacity after the county court has entered its order of complete settlement and distribution (T80) pursuant to Neb. Rev. Stat. section 30-24,115 (Reissue 1995) since he no longer represents the decedent's estate, although the court may still have personal jurisdiction over the personal representative (Neb. Rev. Stat. section 30-2451 (Reissue 1995))?

(3) The District Court erred in finding that it is appropriate for the court to address the issues of fact and law "sua sponte" without a hearing (T91, T101) because Nebraska Evidence Rule 201 (5) and the 14th Amendment to the U.S. Cosntitution allow Waite an opportunity to be heard when Waite requested such hearing in his motion for new trial after he was first notified that judicial notice had been taken on October 3, 1996 by the court. **Issues:** Did the district

court violate Waite's rights under the 14th Amendment to the U.S. Constitution and under Nebraska Evidence Rule 201 (5) when it considered the matters "sua sponte" without an opportunity to be heard and made its own investigation of the facts, admitted its own evidence, ruled on the admissibility of its own evidence, and excluded relevant evidence and without allowing Waite an opportunity to admit into evidence a certified copy of the order of complete settlement from the probate court?

(4) The District Court erred in finding that the defendant's motion to strike pleadings and to dismiss filed July 19, 1991 was granted on September 5, 1991 (T91) and failed to uphold Neb. Rev. Stat. section 25-842 (Reissue 1995) which states that every material allegation of the petition not controverted by the answer, shall, for the purposes of the action, be taken as true because the court records contain **no** actual order disposing of that motion and contains **no** actual order or motion converting the motion to strike pleadings and to dismiss into a motion for summary judgment (T103) and the plaintiff's third amended petition alleges these material facts (T47) which were **not** controverted by the defendant's answer (T103). **Issue:** When there is absolutely no order filed in the court records which actually disposes of the defendant's motion to strike pleadings and to dismiss or any order or notice or motion which converts that motion into a motion for summary judgment (T103), may the district court find that the defendant's motion to strike pleadings and to dismiss was granted on September 5, 1991 when such fact is contrary to the evidence before the court

and when such fact is contrary to Neb. Rev. Stat. section 25-842 (Reissue 1995)?
(5) The District Court erred in finding that Mr. Waite has improperly styled the case to suit himself (T101) because Neb. Rev. Stat. section 25-322 (Reissue 1995) clearly states that an action does not abate by the death or other disability of a party, or by the transfer of any interest therein during its pendency and Waite's third amended petition (T47) alleges the fact that Waite is the only real party in interest since he is the personal representative and sole heir of the decedent's estate under intestate succession pursuant to court order dated May 15, 1996 and the defendants failed to object by filing an answer (T103) and this material allegation must be held as true pursuant to Neb. Rev. Stat. section 25-842 (Reissue 1995). **Issues:** Since the defendants failed to answer or object (T103) to Waite's third amended petition which alleged the fact that he was the only real party in interest, did the defendants waive their right to complain or object and must the court hold this material allegation as true pursuant to Neb. Rev. Stat. section 25-842 (Reissue 1995) and when such fact is contrary to the evidence before the district court?

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D. REGIONAL WEST MEDICAL CENTER, Defendants.	* * * * * * * * *	NO. 38269 **AMENDED MOTION THAT JUDGE HIPPE RECUSE HIMSELF AND MOTION FOR CHANGE OF JUDGE OF VENUE**

COMES NOW, Plaintiff, Glenn R. Waite, individually, as former Personal Representative of Harriet I. Waite, deceased, pursuant to Neb. Rev. Stat. section 30-2451 (Reissue 1995) and as sole distributee of the estate of Harriet I. Waite, deceased, pursuant to court order by the County Court of Sheridan County, Nebraska, on May 15, 1996 hereby files his amended motion that Judge Hippe recuse himself and his motion for change of Judge or Venue which supersedes any and all previously filed motions.

Plaintiff states that when this action was filed on April 8, 1991 the case was assigned to Judge Hippe. On July 25, 1994, Judge Hippe pursuant to local rule 17-2 2(c) reassigned this case to Judge Kortum. On or about July 1, 1996, Judge Kortum retired from his Judgeship and according to the Clerk of the Court, the case has been reassigned back to Judge Hippe who is the senior Judge of this District Court.

On July 15, 1996, the plaintiff filed his Third Amended Petition alleging the fact that Judge Hippe had sustained defendant Carpenter's motion for summary judgment on

September 5, 1991 with the only issue being determined was that there was no genuine issue as to any material fact that the pleadings filed by the personal representative were a nullity. Plaintiff also alleged the fact that Judge Hippe's wife has a financial interest in the results of the lawsuit since (1) she is a nursing instructor and Chairsperson of the practical nursing program which is a joint program of Regional West Medical Center and Western Nebraska Community College; and (2) nursing students from Western Nebraska Community College caused damage to Harriet Waite.

On July 15, 1996, the named defendants were served by certified U.S. Mail by serving a copy of the third amended petition upon attorneys James A. Snowden and Mark E. Novotny pursuant to Neb. Rev. Stat. section 25-534 (Reissue 1995). Within thirty days after the defendants were served, the defendants failed to file an answer or demurrer or other motion raising any legal or factual issue except for the issue of damages. Plaintiff claims that pursuant to Neb. Rev. Stat. section 25-842 (Reissue 1995) every material allegation of the third amended petition not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of this action be taken as true. Plaintiff states that he personally heard the honorable Judge Robert O. Hippe at the January 7, 1994 hearing in case number 38270 state that his wife, Anne Hippe, was a former employee of the defendant, Regional West Medical Center, and was a present employee of the Western Nebraska Community College School of Nursing which is an affiliate of Regional West

Medical Center a/k/a Western Nebraska General Hospital.

Plaintiff files this amended motion for change of Judge or Venue pursuant to Neb. Rev. Stat. section 24-739 (Reissue 1995) and Neb. Rev. Stat. section 27-605 (Reissue 1995) and local rule 17-1 (2) (c) and (d) based on the allegations Judge Hippe has violated the Canons of the "Nebraska Code of Judicial Conduct" effective September 1, 1992 and as a result this Plaintiff cannot obtain a fair hearing in this matter because of Judge Hippe's pecuniary interest in this action.

Plaintiff states that Nebraska law authorizes him [a party], in good faith, to make a motion for a change of Judge or Venue. Plaintiff requests this court to certify Judge Hippe's disqualification in this action. Plaintiff requests a hearing on this issue before an impartial Judge and requests the Court to hear this matter before hearing any other pending motions filed in this action.

In support of this motion, plaintiff incorporates herein and attaches hereto his own affidavit.

WHEREFORE, Plaintiff, Glenn R. Waite, individually, respectively requests this Court certify Judge Hippe's disqualification and to assign this case to a Judge other than Judge Robert Hippe who can render an impartial decision in regard to any pending motions filed in this action. Plaintiff prays that the Court will grant him a hearing and decide this matter before taking and deciding any other matter pending before this Court.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he mailed a true and correct copy of the foregoing AMENDED MOTION FOR RECUSAL to Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508 by first class U. S. Mail, postage prepaid, this the _____day of _____1996.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff, vs. W. SCOTT CARPENTER, M.D. and REGIONAL WEST MEDICAL CENTER Defendants.	)))))))	No. 38269 AFFIDAVIT OF GLENN R. WAITE

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, first duly sworn on oath, makes this affidavit based on personal knowledge, and deposes and states as follows:

1. Affiant is the natural son of Harriet I. Waite, deceased, and is sole distributee of the Estate of Harriet I. Waite, deceased, by decree rendered May 15, 1996 in the County Court of Sheridan County, Nebraska.

2. Affiant states that he filed his third amended petition in case 38269 in this Court on July 15, 1996. On July 15, 1996, defendant, W. Scott Carpenter, M.D., was served with a copy of the third amended petition by serving a copy upon Mark E. Novotny, attorney at law, via certifed U.S. Mail. A true copy of the signed "Domestic Return Receipt" is hereby attached. On July 15, 1996, defendant, Regional West Medical Center, was served with a copy of the third amended petition by serving a copy upon James A. Snowden, attorney at law, via

certifed U.S. Mail. A true copy of the signed "Domestic Return Receipt" is hereby attached. The defendants have failed to file any answer or any motion in response to affiant's third amended petition within thirty days of being served with a copy of the petition.

3. Affiant states that he is the rightful recipient of the proceeds from this wrongful death action filed in this Court by the Personal Representative of Harriet I. Waite, deceased, pursuant to court order of the county court of Sheridan County, Nebraska, on May 15, 1996.

4. Affiant states he has personal knowledge that Anne Hippe is the wife of Judge Robert O. Hippe who is a judge of this District Court.

5. Affiant states that he has personal knowledge that Anne Hippe, wife of Judge Hippe, is a nursing instructor and the Chairsperson of the Practical Nursing Program at Western Nebraska Community College which is an affiliate of Regional West Medical Center who is a defendant in this action.

6. Affiant states that he has personal knowledge that Rebecca Bartlett, nursing student at Western Nebraska Community College, caused damaged to Harriet Waite.

FURTHER AFFIANT SAYETH NOT.

_____
Glenn R. Waite

Subscribed and sworn to before me this the _____day of _____1996.

_____
Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D. and REGIONAL WEST MEDICAL CENTER Defendants.	))))))	No. 38269 **MOTION FOR NEW TRIAL OR MOTION TO RECONSIDER ORDER DATED OCTOBER 3, 1996**

COMES NOW, Plaintiff representing only his own interests hereby requests this Court to reconsider its order rendered October 3, 1996 pursuant to Neb. Rev. Stat. section 25-1142 (Reissue 1995) on the following grounds:

1. Irregularity in the proceedings of this court by which this party was not permitted a fair trial:

a. The proceedings held in this case on September 3, 1991 and the order entered on September 5, 1991 violated this plaintiff's due process rights under the 5th and 14th Amendments to the U.S. Constitution because Judge Hippe's wife had a financial interest that could be substantially affected by the outcome of the proceeding. This court denied this plaintiff his U.S. Constitutional right to the opportunity for a hearing to prove his allegations concerning the financial interest of Judge Hippe who signed the September 5, 1991 order. The September 5, 1991 order is void under federal law.

b. An adjudication on the grounds of "Res Judicata" goes to the facts in the cases and rests on the introduction of competent evidence and this court denied this party a notice and the opportunity for

a hearing to present additional evidence or objections on this issue in violation of his 5th and 14th Amendment rights under the U.S. Constitution.

c. This court violated Article IV of the United States Constitution when it denied this plaintiff, a non-resident of Nebraska, his opportunity to represent himself on his own causes of action (whether the September 5, 1991 order of dismissal is void under the 14th Amendment in this case and whether the defendants committed fraud against Glenn R. Waite) when the Nebraska Courts allow its own citizens the opportunity to represent themselves on their own cause of action in a non representative capacity.

d. This court denied this plaintiff his right of trial by jury which is guaranteed by Article VII of the United States Constitution on all issues of fact in this action.

e. Nebraska Revised Statute section 7-101 (Reissue 1991) upon which the September 5, 1991 and October 3, 1996 Orders in this case are based is repugnant to and violates the 1st, 5th and 14th Amendments to the U.S. Constitution because if allows a Judge to dismiss a case without prior notice and the opportunity for a hearing before an impartial decision maker to determine the fact issue of whether the person who signed the petition or motions is in fact a party with a real interest in the action or proceeding.

f. Under Nebraska law, there is no pre-trial pleading known as a "motion to dismiss".

g. It is a violation of the due process clause of the 14th Amendment to the U.S. Constitution to punish the plaintiff for

doing what he is legally entitled to do such as to represent himself on the issues presented in this action (whether or not the September 5, 1991 order of dismissal is void under the 14th Amendment and whether the order of dismissal on September 5, 1991 is irregular under Neb. Rev. Stat. section 25-2001 et. seq.).

2. That the decision is not sustained by sufficient evidence, or is contrary to law as follows:

a. The matters addressed after September 5, 1991 are whether or not the September 5, 1991 order of dismissal in this case (not 38268 and 38271) is void under the 14th Amendment to the U.S. Constitution and whether it is irregular under Neb. Rev. Stat. section 25-2001 et. seq. The matter addressed by the petitioner is not whether Waite previously engaged in the unauthorized practice of law. There is no evidence whatsoever that this court has previously addressed whether the order of dismissal dated September 5, 1991 in 38269(not 38268 or 38271) is void under the U.S. Constitution.

b. There is not sufficient evidence to show that the Court heard the defendant's "motion to strike pleadings and to dismiss" on September 3, 1991 or that the Court actually ruled on this motion on September 5, 1991 or any time thereafter in this particular case (38269) and that this Plaintiff (Glenn R. Waite, individually) had any opportunity whatsoever to appeal any such purported ruling on this particular motion in this particular case (38269) to a higher court.

c. There is not sufficient evidence to show that this case and the cases appealed

in 38268 and 38171 are the same in all respects (case 38269 alleges that the defendants committed fraud and damaged Glenn R. Waite).

d. There is not sufficent evidence to show that this case and the cases appealed had any judgment which was a "judgment on the merits of the causes of action" rather than merely a "judgment based on a technical defect of pleading, defect of parties, lack of jurisdiction, or matters of practice or procedure" which are not "res judicata".

e. There is not sufficient evidence to show that this case and the cases appealed from had any final judgment rendered against "Glenn R. Waite" rather than against "Glenn R. Waite, personal representative of the estate of Harriet I. Waite" (The personal representative individually is a distinct legal person from the personal representative in his official capacity. Under Neb. Rev. Stat. section 30-2451, the personal representative no longer represents the estate though the court has jurisdiction over the personal representative).

f. There is not sufficent evidence to show that the basis of each cause of action, in this case and the cases appealed, is the alleged wrongful death of Harriet I. Waite. The court fails to distinguish between a survival action and a wrongful death action and plaintiff's own cause of action.

g. It is contrary to law to bar this plaintiff's second cause of action based on fraud which has never been brought or ruled upon in any other case than this one (38269) and which is clearly this plaintiff's own cause of action.

h. There is not sufficient evidence and it is contrary to law to hold that all the

parties or their privies present in this action were involved in the prior action (Glenn R. Waite, individually, could not be made a party in the wrongful death action prior to the time the county court determined who was entitled to the proceeds from the wrongful death action and distributed the estate).

i. It is contrary to law to disregard the county court's order of complete settlement and distribution in the matter of the estate of Harriet I. Waite, deceased, which determined that this plaintiff is the sole heir and sole distributee which is a court of competent jurisdiction. and to use the ruling in this court and the Nebraska Court of Appeals as the judgment which is "res judicata" when this court and the Nebraska Court of Appeals have no original probate jurisdiction to determine whether or not "Glenn R. Waite" is the sole heir and sole distributee of Harriet I. Waite and therefore is not a court of competent jurisdiction.

WHEREFORE, Plaintiff respectively requests that this court grant his motion to reconsider this court's order entered October 3, 1996 and vacate the order.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	)	No. 38269
vs.	)	**NOTICE OF APPEAL**
W. SCOTT CARPENTER, M.D. REGIONAL WEST MEDICAL CENTER Defendants.	)	

TO: W. SCOTT CARPENTER, M.D. AND REGIONAL WEST MEDICAL CENTER AND ITS AFFILIATE, WESTERN NEBRASKA COMMUNITY COLLEGE, AND THEIR ATTORNEYS OF RECORD: Mark E. Novotny, 10306 Regency Parkway Drive, Omaha, NE 68114; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508.

Plaintiff, Glenn R. Waite, individually, as the sole heir and sole distributee pursuant to court Order dated May 15, 1996 in the courty court of Sheridan County, Nebraska, and as acting Personal Representative of Harriet I. Waite, deceased, in a non-representative capacity pursuant to letters of personal representative issued January 2, 1991 which are still in effect and representing himself pursuant to Neb. Rev. Stat. section 30-2451 (Reissue 1995) hereby notifies all parties that he intends to prosecute an appeal to the Nebraska Court of Appeals and Nebraska Supreme Court from the decision of the Honorable Judge Paul Empson dated October 3, 1996 in which he overruled this plaintiff's motions brought pursuant to Neb. Rev. Stat. section 25-2001, et. seq. and pursuant to Article VI, section 2, U.S. Constitution, and the 14th Amendment to the U.S.

Constitution to vacate the summary judgment of dismissal entered September 3, 1991 and from the decision to deny plaintiff's motion to reconsider Order Dated October 3, 1996.

Glenn R. Waite,
individually, and as
Personal Representative
in a non-representative
capacity,
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing NOTICE to be served upon James A. Snowden, 1000 NBC Center, Lincoln, NE 68508; and Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114 by first class U. S. Mail this the ___day of _____ 1996.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

I certify that the attached are true and accurate copies of pleadings filed in the above-captioned case.

[x] The case is a civil case
[x] Law (general) or

Origin of case:
[ ] County court
[x] District Court
[ ] Other_____

Notice of Appeal directed to:
[x] Court of Appeals
[ ] Supreme Court

Statutory authority:
[ ] Constitutionality of statute
[ ] Other (Specify statute) ____

Notice of Appeal was filed on November 1, 1996; or a poverty afidavit was filed on _____.

Cost bond posted on November 1, 1996 in $75. Cash in lieu of cost bond posted on _____in $_____; of supersedeas bond posted on _____ in $_____. (Neb. Rev. Stat. SS 25-1914, 25-1919) (Reissue 1991)

All Motion for new trial have been disposed of:
[x] Yes. Date: October 25, 1996
[ ] No.
[ ] No motions for new trial filed.

Date: November 4, 1996

SEAL

_____
Ann Rosenberry
Clerk of District Court
By:_____
Santos Castro
Deputy

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D. and REGIONAL WEST MEDICAL CENTER Defendants.	))))))	Case No. 38269 BILL OF EXCEPTIONS VOLUME I - PROCEEDINGS (Page 1 to 19, incl.,and Exhibits

Proceedings had before the HONARABLES ALFRED J. KORTUM and ROBERT O. HIPPE, on September 5, 1991, at Gering, Nebraska.

APPEARANCES

For the plaintiff: McNIFF & PATTEN
Attorneys at Law
P.O. Box 945
Cheyenne, Wyoming
By: Alexander K. Davison

For the defendants: VAN STEENBRG LAW FIRM
1904 First Avenue
Scottsbluff, Nebraska
By:Robert P. Chaloupka
and
KNUDSEN, BERKHEIMER, RICHARDSON & ENDACOTT
Attorneys at Law
1000 NBC Center
Lincoln, Nebraska
By: Mark Novotny

LYNNE A. PFORTMILLER
OFFICIAL COURT REPORTER
GERING, NEBRASKA

CERTIFICATE

I, Lynnē A. Grimm Pfortmiller, official court reporter in the District Court of Nebraska for the Seventeenth Judicial District, do hereby certify that the within and following transcript is correct and complete, and contains all matters required to be included herein pursuant to the paraecipe filed and the rules of the Supreme Court of the State of Nebraska; that said supplemental Bill of exceptions consists of:

VOLUME I - PROCEEDINGS (Pages 1 to 19, incl.,) EXHIBITS 1,2,3,4

that the cost of said transcript is $52.25, an amount permitted to be charged by Neb. Rev. Stat. 25-1140.09 (Reissue 1985).

Dated this 23rd day of October 1991.

_____

Lynne A. Grimm Pfortmiller

(On Setember 3, 1991, in the District Court of Scotts Bluff County, Nebraska, before the HONORABLES ALFRED J. KORTUM and ROBRT O. HIPPE, JUDGES of said court, and Mr. Alexander Davison appearing on behalf of the plaintiff, and Mr. Robert P. Chaloupka and Mr. Mark Novotny appearing on behalf of the defendants, the following proceedings were had:)

JUDGE KORTUM: Let us get the matters on the record first. I have three cases and Judge Hippe has two that are connected apparently to the same situation. I have 38267, Glenn R. Waite, P.R., plaintiff, W. Scott Carpenter, defendant, that's 38267. 38268 is Glenn R. Waite, Personal Representative, W. Scott Carpenter, et. al.;

and 38271, Glenn R. Waite, W. Scott Carpenter, M.D., et. al., defendants. Judge Hippe, you have a couple?

JUDGE HIPPE: I have two. The first one is No. 38269 and the second one is No. 38279, plaintiff is the same in both, Glenn R. waite, Personal Representative, Harriet I. Waite, deceased, and the defendants are two, W. Scott Carpenter and Regional West Medical Center.

JUDGE KORTUM: All right. So we'll have some idea who we have here, who appears for the defendants this morning?

MR. CHALOUPKA: Bob Chaloupka for the hospital related defendants.

MR. NOVOTNY: And Mark Novotny for the remaining defendants.

JUDGE KORTUM: Now, Mr. Waite is here personally and he has counsel with him, you are Mr.?

MR. DAVISON: Alexander Davison, D-a-v-i-s-o-n.

JUDGE KORTUM: Alexander Davison, whereare you from, Mr. Davision?

MR. DAVISON: Cheyenne, Wyoming. I'm licensed in Nebraska.

JUDGE KORTUM: And you're appearing for purposes of these hearings, you tell me?

MR. DAVISION: That's correct, Your Honor.

JUDGE KORTUM: All right. So it will be --I got a call this morning from a Mr. Brown in Lincoln, he stated that he was an attonrey and I can't remember his first name, and he said he had been talking to you about representation, do you --

MR. WAITE: Yeah, Jim Brown, Fleming, and Moore.

JUDGE KORTUM: Is his name James?

MR. WAITE: Yes, James Brown.

JUDGE KORTUM: He didn't say that he represented you but he said he had recieved some matters from you Friday and he had been in Iowa and I wasn't sure whether he-- He obviously hasn't filed an appearance yet.

MR. WAITE: Yeah, he's received copies of all the medical records and all the-- well, the amended complaints.

JUDGE KORTUM: Do you and he have an agreement that he's going to represent you yet or is tht still up in the air?

MR. WAITE: I've tried to contact him while I was gone to California about three times and he didn't return my telephone calls.

JUDGE KORTUM: So there's nothing firm that Mr. Brown is actually going to handle your side of the case for you, is there?

MR. WAITE: I haven't talked to Mr. Brown, I don't know.

JUDGE KORTUM: Well, you haven't ever talked to him?

MR. WAITE: Yes, I talked to him on the initial visit but since then I haven't talked to him.

JUDGE KORTUM: So right now there's nothing firm, I take it, as to whether he --

MR. WAITE: No, not on his part. There's something being firmed up with another attorney.

JUDGE KORTUM: All right. We have motions, I believe they're identical motions, motions for summary judgment and I'll ask you to have those marked, have your exhibits marked, Mr. Chaloupka.

MR. CHALOUPKA: Your Honor, I think the originals of the affidavits have been sent to the court.

JUDGE KORTUM: Yes, they're in the file.

MR. CHALOUPKA: They're in the file,

okay. I would mark the affidavit of Ted Dillow as Exhibit 1 for both motions. We're just looking for the affidavit of Jim Snowden and I don't think we have the original of that.

(Exhibit No. 1 marked for identification)

MR. CHALOUPKA: I've got about seven copies of Dillow's and none of --

MR NOVOTNY: Actually there should be a copy of Dillow's affidavit for each of the cases.

JUDGE KORTUM: Yes, you're going to have to have -- You can mark it now and substitute that copy with a heading in each case.

MR. CHALOUPKA: Okay. We'll do that.

MR. NOVOTNY: Exhibit No. 1 for each of the five cases, Ted Dillow, original affidavit.

JUDGE KORTUM: Affidavit of Ted Dillow, is that who it is?

MR. NOVOTNY: Yes, Your Honor.

MR. CHALOUPKA: I would ask leave to substitute.

JUDGE KORTUM: There's a heading with all of the parties and it's marked affidavit, and Mr. Snowden's is there.

MR. CHALOUPKA: And I would ask leave of the court then to mark and file the affidavit that the court just made reference to, it's an affidavit of Jim Snowden and it's under the caption of all the cases, 38270, 38269, 38171, 38268 and --

JUDGE KORTUM: Have you seen that, Mr. Davison, have you seen that affidavit of Mr. Snowden's?

MR. DAVISON: I have not, Your Honor. I have also not seen the affidavit of Ted Dillow but I'm pretty sure I know what it is.

JUDGE KORTUM: All right. in any event,

they were filed, they were filed with the motion for summary judgment as pursuant to the rules. Do you have any objections to the reception of those for purposes of this motion?

MR. DAVISON: No objection.

JUDGE KORTUM: All right. They're all received.

(Exhibits Nos. 1 and 2 are hereby made a part of this bill of exceptions and may be found at the end of this volume.)

MR. NOVOTNY: Your Honor, there should additionally be an affidavit of Mark Novotny attached to the brief, an original affidavit in each of the cases.

JUDGE KORTUM: Well, the statutes in Nebraska say you file the affidavits in the court file. Now, if you've filed some affidavits in the brief they don't qualify.

MR. NOVOTNY: I attached them to the brief when I sent the briefs to the court.

JUDGE KORTUM: That may well be, but that does not--that does not pass muster under the summary judgment statutes. The originals are filed with the clerk, copies are sent to opposing parties and counsel and to give them proper notice of what you position is. I don't have my briefs in front of me and unless you get an agreement that they can come in, they don't constitute evidence in this case.

MR. NOVOTNY: I would ask leave to have those come in in that they were supplied to the opposing parties approximately 30 days in advance and I would ask that you disattach them from the briefs and have those submitted also as evidence.

JUDGE KORTUM: Any evidence -- does that concude your evidence for the plainitffs?

MR. CHALOUPKA: It does your Honor, with

Mr. Novotny's affidavit, and I would join in the request that it be disattached from the brief, marked at this point in time and put it in. And I think under the statute he's given them a copy of it so that that should do it.

JUDGE KORTUM: I take it, Mr. Davison, you don't have this information, do you, none of it was sent to you? You were never counsel of record.

MR. DAVISON: I didn't receive anything on a certificate of service. Dr. Waite supplied me with some of these documents, however, I have never seen the affidavits which have been admitted into evidence and, of course, would be required to object to the production of any not filed pursuant to the summary judgment proceedings.

JUDGE KORTUM: Any argument on that, gentlemen?

MR. NOVOTNY: Again, Your Honor, these were properly supplied to opposing counsel and they had -- the mere fact that Mr. Waite has not supplied these to his counsel attending today should not hamper the --

JUDGE KORTUM: Were these sent to Mr. Waite personally? They were, were they not?

MR. NOVOTNY: Yes.

JUDGE KORTUM: You tell me up until this date there has been no appearance of any counsel?

MR. NOVOTNY: Absolutely, Your Honor.

JUDGE KORTUM: You say Mr. Waite was appraised of the---of this affidavit?

MR NOVOTNY: Absolutely, Your Honor.

JUDGE KORTUM: Judge Hippe, do you have that affidavit?

JUDGE HIPPE: It was with the affidavit.

JUDGE KORTUM: Any comment on that, Bob?

MR. CHALOUPKA: I have no further

comment than that. I don't have a copy of his certificate of service but it's my recollection that the certificate of service does show the copy of Mr. Novotny's affidavit was sent to Mr. Waite, Dr. Waite, personally. If that's true, then I would submit that it should be admissible.

JUDGE KORTUM: Yes, I have Mr. Novotny's affidavit which is attached to the briefs dated, looks like it was received by me 8-8-91.

MR. NOVOTNY: Yes, Your Honor, those were supplied to Mr. Waite approximately the same date.

JUDGE KORTUM: Well, Judge Hippe has been reviewing Section 24-1334, it says, "The court may permit affidavits to be supplemented or opposed by deposition of by further affidavits." The purpose of the filing requirements is to give notice to the other side so that they're appraised of what the positin of the parties is factually. I'm inclined to let it in.

JUDGE HIPPE: Okay.

JUDGE KORTUM: I'm inclined and Judge Hippe agrees with me to let that affidavit of Mr. Novotny be marked and received over the objection of Mr. Davison because there's no suprise to Mr. Waite, he received that sometime in August, early August, and he was aware of the position and the factual matters and would be given an opportunity to rebut any of the factual matters stated in that affidavit. Is that affidavit marked? That will be marked and used in all the cases.

(Exhibit No 3 marked for identification)

JUDGE HIPPE: there's another one around here.

MR. NOVOTNY: There were five

affidavits, on for each case.

JUDGE HIPPE: Then there's this one.

JUDGE KORTUM: Yeah, that's the long one. So we have defendants's Exhibit 1, the affidavit of Ted Dillow, in each case, whether they be originals; Exhibit 2, the affidavit of James Snowden; and Exhibit 3, the affidavit of Mark Novotny. Those are all going to be received for purposes ofthis motion for summary judgment, gentlemen. Mr. Davison, do you have affidavits in opposition?

(Exhibit No. 3 is hereby made a part of this bill of exceptions and may be found at the end of this volume.)

MR. DAVISON: Your Honor, Dr. Waite filed with his resistence to the motion for summary judgment an affidavit, I'm not sure the value of it but for purposes of completing the record, perhaps we should submit that. And it is captioned as to all five cases, so beg the Court's forgiveness, but I'll have to make copies of this.

JUDGE KORTUM: All right. Yes if you just have one we can run copies, my baliff can run copies for you.

(Exhibit No. 4 marked for identification.)

JUDGE KORTUM: Counsel for the defendants, you have a copy of that, do you not? It shows it was mailed on July 24, to you, it's an affidavit attached to an objection to the motion. And I assume you have that. It was filed in the court on July 26th, mailed to you on the 24th, I assume you have that.

MR. CHALOUPKA: We do, Your Honor. We have no objection.

JUDGE KORTUM: any objections to that affidavit?

MR. CHALOUPKA: No. Your Honor.

JUDGE KORTUM: That's received. Anything else in the way of evidence under the statute?

(Exhibit No. is hereby made part of this bill of exceptions and may be found at the end of this volume.)

MR. DAVISON: No.

JUDGE KORTUM: That will close that. Who will be arguing, you'll be -- each of you will be arguing this?

MR. NOVOTNY: Yes, Your Honor.

JUDGE KORTUM: What can you tell us?

MR NOVOTNY: Your Honor, as outlined in my brief, I don't really want to regurgitate the briefs to you, sir, in Nebraska the law is clear that one is not allowed to practice law without a license. In this case Mr. Waite is the duly appointed personal representative of the estate of Harriet Waite and he has brought five actions or actually six actions in this county, one in federal court but that's no relevant here. And he has signed the pleadings, he has initiated the pleadings, signed the pleadings, participated in oral argument for motions in the past; he has sent out a number of discovery requests, he being the author and he being the signatore on those documents.

The law in Nebraska, as pointed out in our brief, shows that one cannot act in a representative capacity. One is allowed to bring an action in their own name. If Mr. Waite had a cause of action against anybody in this world he could sue against that person in his own name, but as a personal representative he cannot bring a cause of action in a representative capacity and that includes the types of actions here. The

statute allows him as personal representative to bring the action in his own name. And as the court knows, in wrongful death actions you name the personal representative as a party. There's a difference between bringing the action and going forward on the action.

The law states that any case so brought in a representative capacity as this must be because Mr. Waite is trying to adjudicate the rights of all the heirs of the parties, it must be held as a nullity and it is proper for a motion for summary judgment and it's proper for the court to disiss that.

Most notable in our brief we cite a case from Wisconsin that addressed that specific issue and the court in that case did discuss how a personal representative of all the heirs and even if the personal representative had a private cause of action themselves and sued themselves, that still wouldn't be enough because no matter what the personal representative would do or individual would do in his own name, it would affect everyone else. And because everyone else is being affected, all the other heirs are being affected by this cause of action, it is not proper without an attorney and such that must be dismissed or held a nullity.

Again, I don't want to regurgitate the entire brief but that's our position in this case. The affidavit of Ted Dillow who's the president of the Nebraska Bar Association shows that Mr. Waite is not an attorney in this state and is not licensed to practice law. The affidavit of Jim Snowden and my affidavit merely point out to the court that things I've just mentioned; that Mr. Waite has participated in hearings, Mr. Waite has

drafted and filed complaints and drafted and filed discovery documents.

Based on the reasons in our brief and the evidence submitted, we would then ask that the court hold that the five lawsuits are nullities and have them dismissed. Thank you.

JUDGE KORTUM: Anything to add, Mr. Chaloupka.

MR. CHALOUPKA: I really have nothing to add, Your Honor, over the briefs and Mr. Novotny's argument.

JUDGE KORTUM: Mr. Davison, Mr. Waite has an affidavit in here, what is the effect of that?

MR. DAVISON: Mr. Waite's -- Dr. Waite's affidavit just merely states that he is the personal representative of the plaintiff in the cases and I don't know that it goes to the issues presented by the affdavits of the defendants. In fact, one of the assertions was that he was the personal representative and that affidavit would support that. I would like to, however, make two points for Your Honors to consider.

Counsel for the defense has stated that Dr. Waite is acting in the capacity of personal representative and I think there's a significant difference between stating that and actually establishing by admissible evidence and competent evidence before this court that he is, in fact, representing other people. They referred to this case in Wisconsin and I would respectively refer Your Honors to a case in Hawaii where the trustee for a trust was seeking the right to represent the trust and the court asked the trustee to provide them with evidence that this individual was the sole beneficiary under the trust. The trustee did not do so

and the court declined to allow him to represent the trust, not being certain that he was the sole beneficiary.

In this situation, the affidavit supplied by the defendants do not express any view or contain any information with respect to how Dr. Waite may be situated in the estate which is being represented. Now, I say that that is a crucial part of the evidence which is missing and I'm not saying that there's evidence before this court that that --- the reverse is true, just simply stating that it's not there. However, if the court is inclined to accept the idea that there is representation of others here, I would suggest that the Niklaus case, which I think expresses well the view of the Nebraska high court, leaves certain latitude before Your Honors to consider in ruling on the motion for summary judgment and it says that proceedings in suit may be dismissed, but dismissal for proceeding of just cause is a drastic remedy and may not be required in all cases.

It certainly -- the public policy upon which the unlicensed practice of law is founded would not favor dismissal and total prejudice of the rights of any individual who may in fact be representing in this matter. I would point out to Your Honors that even a dismissal without prejudice may very well eliminate any possibility of a claim because of the statute of limitations and would give rise to additional litigation on that point. So I guess what I would propose is that the court in its discretion refrain from dismissing these actions but require that Dr. Waite retain counsel to eliminate thses problems and to do so expeditiously. Thank you.

JUDGE KORTUM: Anything further?

MR. NOVOTNY: Yes, Your Honor. Mr Davison has mentioned two areas of concern. the first being whether or not it is shown by the evidence that Mr. Waite or Dr. Waite is appearing in a representative capacity in these lawsuits. I think you'll note in the affidavit of Mark Novotny that I indicate that the complaints or petitions or amended complaints and petitions themselves ask for relief for the next of kin of Harriet Waite. I would propose that that in and of itself shows that Mr. Waite, Dr. Waite is bringing these actions in a representative capacity. The second point of Mr. Davison's argument is that he would like leave of the court for Mr. Waite to --- Dr. Waite to find counsel in these actions.

I would first point to the court that these actions have been on file since April of this year. Secondly, I would point to the courts to the fact that the case law in Nebraska and particularly the second -- the newest case out of the Supreme Court, the the Back Acre case specifically states that these should be dismissed and these type of actions should not be encouraged. And actually, the statute says the court should not encourage or allow these types of actions and the courts have a duty to dismiss these types of actions.

And lastly, I'd like to point out to the court again the discussion of the Wisconsin case. That court in that case said there's a duty of the court to protect all these people who are being represented. That duty is so that someone who is not skilled or versed in the law will not prejudice their rights and because of that, the overwhelming public policy would the be

to require the attorney to protect the rights of all these people and if that attorney is not bringing the action, then the suit must be dismissed until an attorney could bring the action himself or herself. For those reasons, again, Your Honors, we would like, we request our motions for summary judgment be granted in all five cases.

JUDGE HIPPE: Yes, I had a question for Mr. Novotny and Mr. Chaloupka. If there was only one heir in the estate and that was Glenn Waite, wouldn't it be an awful lot like someone representing themselves if that were the facts? I mean, we assume, I think, that people can represent themselves.

MR. NOVOTNY: As a matter of fact, Your Honors, I could point out to an ALR annotation which would indicate in such a circumstance where there's only one heir, that would be appropriate. But if there's even the inkling or suspicion of someone else it's not appropriate and it's very clear in this action that there are other heirs and Mr. Waite brings these actions on behalf --

JUDGE KORTUM: Why is this court being kept in the dark to that particularly important fact when the allegations in the complaint, in the petition, although not drafted as it might be, says he attaches letters of personal representative, and that's all. It doesn't say anything about who the heirs are. And obviously the law in Nebraska says an action must be brought in the name of the personal representative for the heirs, but why are we being kept in the dark as to who the heirs of Harriet Waite are and if that be the case, it would be a lot easier to make -- instead of having to work on hypotheticals here.

MR. NOVOTNY: I understand the court's concern and to date we have not received evidence back from plaintiff regarding who the heirs are. That is a matter of discovry, we don't have the discovery yet. However, again, Mr. Waite, Dr. Waite himself proclaims that this is for the next of kin. I would say that under the summary judgment law in Nebraska, once we provide a prima facie showing that summary judgment is proper, it shifts the burden to him to show that there are no other heirs and it would be proper for him to bring the action in his name as the sole heir of the estate.

JUDGE KORTUM: Okay. That answers my question. Any other questions, Judge Hippe? All right. Well, obviously, gentlemen, Judge Hippe and I are going to want to look your briefs over again in light of the affidavits which you have presented today and in light of Mr. Waite's affidavit, and I think these are your motions, I think you should just prepare appropriate journals showing appearances, show Mr. Davison's appearance for this motion only and the matter is taken under advisement. We'll get back to you as soon as we have a chance to lay these affidavits against the law.

MR. CHALOUPKA: Is there another motion on file yet for consolidation of these cases or was there anything on file yet?

JUDGE KORTUM: Not yet.

MR. CHALOUPKA: Would it be appropriate to take that issue up since everybody's here together? I thought Mr. Snowden was going to file something, apparently he didn't.

JUDGE KORTUM: Well, it's difficult to do so if Mr. Davison representes Dr. Waite for purposes of this motion only, otherwise the he starts getting in as counsel, he's

representing him in opposition to the motion for summary judgment.

MR. CHALOUPKA: Right.

MR. NOVOTNY: And I would just like to add --

JUDGE KORTUM: I think I would prefer that you file some motion and get it before the court. We can do that telephonically.

MR. CHALOUPKA: Maybe that would be the way to do it.

MR. NOVOTNY: That issue may very well be moot also, depending on the court's ruling.

JUDGE KORTUM: Well, that may well be, but rather than take oral arguments, I'm much more comfortable with something in the file. As innocuous as a motion to consolidate is, I would prefer everybody to have a chance to look at it. So if you'll prepare, either Mr. Chaloupka or Mr. Novotny, prepare the appropriate motions or journals showing your appearances and arguments and briefs and evidence the matters taken under advisement by Judge Hippe and I. All right. We'll get to that as soon as possible, gentlemen, thank you. Mr. Davison, would you put on your -- on the record your full name and your address?

MR. DAVISON: Alexander K. Davison, D-a-v-i-s-o-n, with the law firm of McNiff and Patten, that's Box 945, Cheyenne, Wyoming, 82003.

JUDGE KORTUM: And do you have a Nebraska number, is it in your -- I don't know if it's in your mind.

MR. DAVISON: Yes I do. I wrote it down this morning in view of this situation, 18749.

JUDGE KORTUM: That's fine. Thank you very much.

END OF PROCEEDINGS

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

Glenn R. Waite, Plaintiff, vs. W. SCOTT CARPENTER, M.D. and REGIONAL WEST MEDICAL CENTER, Defendants.	)	Case No. 38269 Affidavit of Clerk of District Court, Ann Rosenberry

I, Ann Rosenberry, Clerk of the District Court of Scotts Bluff County, Nebraska do hereby certify that the following requested pleadings are not a part of the file in our Case number 38269 and are therefore not able to be included in this Transcript.

Requested in PRAECIPE FOR TRANSCRIPT filed November 1, 1996:

1. Any Journal Entry in regard to the hearing held September 3, 1991.

2. Any Order or Notice or Motion converting the Motion to Strike Pleadings and to Dismiss filed by Defendants, Regional West Medical Center, On July 19, 1991 into a Motion for Summary Judgment.

3. Any Order specifically disposing of the Motion to Strike Pleadings and to Dismiss filed by Defendant, Regional West Medical Center, on July 19, 1991.

4. Any Order consolidating this case with any other case.

5. Any Answer or any Motion or any pleading filed by the defendants in response to the Plaintiff's Third Amended Petition filed on July 15, 1996.

Dated this 27th day of November, 1996.

SEAL

_____
Ann Rosenberry
Clerk of District Court

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

Glenn R. Waite, Plaintiff, vs. W. SCOTT CARPENTER, M.D. and REGIONAL WEST MEDICAL CENTER, Defendants.	)))))))	Case No. 38269 Affidavit of Clerk of District Court, Ann Rosenberry

I, Ann Rosenberry, Clerk of the District Court of Scotts Bluff County, Nebraska do hereby certify that the following requested pleadings are not a part of the file in our Case number 38269 and are therefore not able to be included in this Transcript.

Requested pleadings in case 38269 that are not filings to date and therefore not contained in that case file:

1. Any affidavits attached to the Motion for Summary Judgment dated August 7, 1991 and filed by Defendant, W. Scott Carpenter, M.D.

2. Any written waiver signed by all parties permitting Judge Hippe to act in case 38269.

Dated this 27th day of November, 1996.

SEAL

_____
Ann Rosenberry
Clerk of District Court

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

Glenn R. Waite, Personal Representative of Harriet I. Waite, Deceased,
Plaintiff,
vs.
W. Scott Carpenter, M.D., and Regional West Medical Center,
Defendants.

No. 38269

COMPLAINT FOR DAMAGES

PARTIES

Plaintiff: Glenn R. Waite, 1820 Drew Avenue, Mountain View, CA94043

Defendants: W. Scott Carpenter, M.D., 4009 Avenue B., Scottsbluff, NE 69361; Regional West Medical Center, 4021 Avenue B Scottsbluff, NE 69361

STATEMENT OF CLAIM

1. Wrongful Death - withdrawal of life support against the expressed wishes of the subject who was a mentally competent adult. The defendant, Dr. Carpenter, on 4-13-89 gave a verbal order for a "no code" against the expressed wishes of the subject. On 4-14-89 he ordered a continuous morphine infusion without the subject's permission and when there were other methods to treat the subject's pain. On 4-15-89, he withdrew the subject's enteral nutrition and failed to provide alternate methods of nutritional support representing negligent treatment with starvation. On 4-17-89 at approximately 2pm he was observed to increase the morphine infusion at the same time the subject was experiencing signs of morphine overdoseage.

The subject subsequently turned blue gasping for air. The defendant and hospital staff failed to perform cardio-pulmonary resuscitation which was medically indicated.

The defendant, Regional West Medical Center, failed to supervise the quality of care resulting in injury to the subject and representing corporate liability.

2. Fraud

The defendant, Dr. Carpenter, misrepresented the subject's condition to family members and recorded false information in the medical record in reference to discussions concerning subject.

The defendant, Regional West medical Center, failed to verfy discussions with the family and failed to supervise the care given by Dr. Carpenter representating corporate liability.

RELIEF

Recover damages for the benefit of the next of kin. Demand is for two million dollars. The period of negligence was from 4-13-89 to 4-17-89. DEMAND IS MADE FOR A JURY TO HEAR THIS CASE.

Executed on 4-2-91.

_____

Glenn R. Waite
Plaintiff

IN THE COURT OF APPEALS FOR THE
STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff-Appellant, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendants-Appellees.	)	NO. 38269 MOTION FOR SUMMARY DISMISSAL

COMES NOW appellee W. Scott Carpenter, M.D., and pursuant to Rule 7(B)(1) of the Nebraska Supreme Court-Court of Appeals Rules, respectfully moves for summary dismissal of the above-captioned matter due to this Court's lack of jurisdiction over the same. In support threof, appellee shows the Court that this matter was dismissed on or about September 5, 1991, and no appeal therefrom has been taken. Based upon the cases of Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (Neb. App. 1992) and Waite v. Carpenter, 3 Neb. App. 879, 522 N.W.2d 917 (Neb. App. 1995), the pleadings filed in this matter are a nullity. Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 29, 443 N.W.2d 604, 605 (1989); Nicklaus v. Abel, 164 Neb. 842, 852-53, 83 N.W.2d 904, 911 (1957).

As noted by the Nebraska Court of appeals in Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 917, 919 (Neb. App. 1995), maybe this is the appropriate time to remind appellant that it is the duty of the courts to prevent abuse of process and frivolous proceedings in the administration of justice.

W. SCOTT CARPENTER, M.D.,
Defendant-Appellee

By:_____
Mark E. Novotny #19102
KENNNEDY, HOLLAND, DeLACY
& SVOBODA
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-0203
ATTORNEYS FOR DEFENDANT-
APPELLEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was mailed by United States mail, postage prepaid, the the following on the ___ day of _____1996.

Glenn R. Waite
1202 West 28th Street
Cheyenne, WY 82001
PLAINTIFF

James A. Snowden
1000 NBC Center
Lincoln, NE 68508
ATTORNEYS FOR REGIONAL WEST
MEDICAL CENTER

_____
Mark E. Novotny

IN THE COURT OF APPEALS FOR
THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, Defendants.	*	NO. A-96-1118 **APPELLANT'S OBJECTION TO MOTION FILED BY APPELLEE**

APPELLANT'S OBJECTION OPPOSING MOTION FOR SUMMARY DISMISSAL FILED BY APPELLEE W. SCOTT CARPENTER, M.D.

COMES NOW, Appellant, Glenn R. Waite, pursuant to Rule 7 (B) (4) of the Supreme Court / Court of Appeals Rules and hereby enters his objections to the motion filed by Appellee, W. Scott Carpenter, M.D. This Appellant opposes the Appellee's motion on the following grounds:

1. Appellee's Motion was filed on or about December 9, 1996 whereas Appellant's brief was not yet been filed.

2. Appellee erroneously concludes that the Nebraska Court of Appeals/ Nebraska Supreme Court lacks jurisdiction of these matters. The district court determined [t91], on October 3, 1996, the plaintiff's motion to vacate filed pursuant to Neb. Rev. Stat. section 25-2001 et. seq. [t15] and the plaintiff's amended motion to vacate judgment of dismissal on lack of jurisdiction [t40] filed pursuant to Article VI the U.S. Constitution. The plaintiff filed his notice of appeal on November 1, 1996 which was within thirty days of the district court's decisions on October 3, 1996 and on October 25, 1996.

3. Appellee erroneously concludes that this appeal is frivolous. Plaintiff has a federal right to file a claim that the judgment of dismissal on September 5, 1991 is void pursuant to the 14th Amendment to the U.S. Constitution. He also has a right to claim that the October 3, 1996 and October 25, 1996 decisions made by the district court are erroneous pursuant Blair v. Commissioner, 300 U.S. 5, and State Farm Mutual Auto. Ins. Co. v. Duel, 324 U.S. 154 since the county court decree on May 15, 1996 [t80] constitutes an intervening judicial decision which creates an altered situation.

Appellant supports this objection with a memorandum brief.

WHEREFORE, Appellant respectively requests and prays that this court will deny Appellee's Motion for Summary Affirmance and Dismissal.

Glenn R. Waite
Plaintiff-Appellant
1202 West 28th St.
Cheyennne, WY 82001
307-634-8712

SUPPORTING MEMORANDUM BRIEF

THIS COURT HAS JURISDICTION TO REVIEW A FINAL ORDER OF THE DISTRICT COURT WHICH AFFECTS THE SUBSTANTIAL RIGHTS OF THE PLAINTIFF DETERMINED IN A SPECIAL PROCEEDING.

Under Neb. Rev. Stat. section 25-1911 and 25-1912 (Reissue 1995), the Supreme Court has jurisdiction to reverse, vacate, or modify a final order made by the district court when the party seeking such review has filed his notice of appeal

within thirty days of the final order made by the district court; Jarrett v. Eichler, 244 Neb. 319, 506 N.W.2d 310 (1993). A "special proceeding" occurs when the law has conferred a right and has authorized an application to the court to enforce that right. A substantial right is affected if the order affects the subject matter of the litigation, such as diminishing a claim or defense that was available to the appellant prior to the order from which he is appealing; Rehn v. Bingaman, 157 Neb. 467, 59 N.W.2d 614 (1953).

In this case, the plaintiff filed, on July 25, 1994 [t15], a motion to vacate judgment of dismissal pursuant to Neb. Rev. Stat. section 25-2001 et. seq. (Reissue 1995) and pursuant to a claim that the judgment is void under the 14th Amendment to the U.S. Constitution [t40]. The district court determined that Res Judicata was dispositive of the law and facts in the case [t91]. Subsequently, the plaintiff filed, within ten days, his motion for new trial claiming an irregularity in the proceedings and that the judgment was contrary to law and that Neb. Rev. Stat. 7-101 is unconstitutional [t95]. On October 25, 1996 [t101], the court determined that the order of October 3, 1996 was correct in all respects and in response to the plaintiff's claim that Neb. Rev. Stat. section 7-101 (Reissue 1991) is unconstitutional, the court further ordered that the clerk of court was to notify the county attorney if Mr. Waite filed any further pleadings "pro se" in this case or any companion case so that this plaintiff could be punished for

having exercised his federal right to claim that the state court failed to provide him with an impartial decision maker in violation of the 14th Amendment to the U.S. Constitution.

It is quite obvious that this court has jurisdiction over the review of the district court's orders dated October 3, 1996 and October 25, 1996 since the plaintiff has a real interest in the action and has complied with the jurisdictional requirement of Neb. Rev. Stat. section 25-1902, 25-1911, and 25-1912 (Reissue 1995).

WHEREFORE, Appellant respectively prays that this court will deny W. Scott Carpenter's motion for summary dismissal.

Glenn R. Waite
Plaintiff-Appellant
1202 West 28th St.
Cheyennne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing OBJECTION to be served upon Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508by first class U. S. Mail this the ___day of _____ 1996.

Glenn R. Waite

IN THE COURT OF APPEALS FOR
THE STATE OF NEBRASKA

GLENN R. WAITE,	*	CASE NO.
Plaintiff,	*	A-96-1118
vs.	*	**AMENDED MOTION**
W. SCOTT CARPENTER, M.D.,	*	**FOR SUMMARY**
REGIONAL WEST MEDICAL	*	**DISMISSAL AND**
CENTER,	*	**MOTION FOR**
Defendants.	*	**SUMMARY**
	*	**AFFIRMANCE**

COMES NOW defendant-appellee W. Scott Carpenter, M.D., and moves the Court pursuant to Nebraska Supreme Court Rule 7(B)(1) for summary dismissal of this action due to this Court's lack of jurisdiction over the same. In support thereof, appellee shows the Court that this matter was dismissed on September 5, 1991, and no timely appeal therefrom has been taken. The Court of Appeals therefore lacks jurisdiction over this matter. See, Neb. Rev. Stat. 25-1912 (Reissue 1995); State v. Flying Hawk, 227 Neb. 878, 420 N.W.2d 823 (1988); State v. Reed, 226 Neb. 575, 412 N.W.2d 848 (1987); Federal Land Bank v. McElhose, 222 Neb. 448, 384 N.W.2d 295 (1986). In addition, any pleadings filed after September 5, 1991, are a nullity. See, Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (Neb. App. 1992); Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 917 (Neb. App. 1995); Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 29, 443 N.W.2d 604, 605 (1989); Nicklaus v. Abel, 164 Neb. 842, 852-53, 83 N.W.2d 904, 911 (1957).

Appellee further moves the Court pursuant to Nebraska Supreme Court Rule

7(B)(2) for summary affirmance of the decisions of the District Court of Scottsbluff County, Nebraska as the questions presented for review are so unsubstantial as to not require argument. the final order of the trial court made September 5, 1991 was correct in all respects, which has been demonstrated beyond doubt by the decisions and judgments of the Nebraska Court of Appeals in Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992); Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 917 (1995), and the doctrine of res judicata bars relitigation of all matters and issues in this appeal. See, Baltensperger v. United States Department of Agriculture, 250 Neb. 216, ___N.W.2d___,(1996); Lincoln Lumber Co. vs. Fowler, 248 Neb. 221, 533 N.W.2d 898 (1995).

As noted by the Nebraska Court of Appeals in Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 917, 919 (Neb. App. 1995), maybe this is the appropriate time to remind appellant that it is the duty of the courts to prevent abuse of process and frivolous proceedings in the administration of justice.

W. SCOTT CARPENTER, M.D.
Defendant-Appellee

By:_____
Mark E. Novotny #19102
KENNEDY, HOLLAND,
DeLACY & SVOBODA
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-0203
ATTORNEY FOR DEFENDANT-
APPELLEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was mailed by United States mail, postage prepaid, to the following on the ___ day of _____1997.

Glenn R. Waite
1202 West 28th Street
Cheyenne, WY 82001

James A. Snowden
1000 NBC Center
Lincoln, NE 68508
ATTORNEYS FOR REGIONAL WEST MEDICAL CENTER

_____
Mark E. Novotny

IN THE COURT OF APPEALS FOR
THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, Defendants.	*	NO. A-96-1118
	*	
	*	**APPELLANT'S OBJECTION TO MOTIONS FILED BY APPELLEE AND MEMORANDUM BRIEF**

APPELLANT'S OBJECTION TO THE AMENDED MOTION FOR SUMMARY DISMISSAL AND MOTION FOR SUMMARY AFFIRMANCE FILED BY APPELLEE W. SCOTT CARPENTER, M.D.

COMES NOW, Appellant, Glenn R. Waite, pursuant to Rule 7 of the Supreme Court / Court of Appeals Rules and hereby enters his objections to the motions filed by

Appellee, W. Scott Carpenter, M.D., dated February 13, 1997. This Appellant objects to the Appellee's motions on the following grounds:

1. Appellee, Carpenter, erroneously concludes that this appeal was taken to a September 5, 1991 order rather than to the Order dated October 3, 1996 overruling motions, amended motions, objections, and petitions and to the Order dated October 25, 1996 overruling motion to reconsider or motion for new trial and therefore the court has no jurisdiction.

2. Appellee, Carpenter, erroneuosly concludes that the questions presented for review are so unsubstantial as to not require argument and overlooks United States Supreme Court precedent which holds that (1) an accused (in this case defendants claim Waite allegedly engaged in the unauthorized practice of law) is entitled to an impartial decision maker prior to judgment regardless of the evidence against him; and (2) res judicata is no defense where between the first judgment and the second action there has been an intervening judicial decision creating an altered situation.

Appellant hereby states that his amended motion dated December 29, 1995 to vacate the judgment of dismissal presents a federal claim and this Court cannot, under the supremacy clause (Article VI, clause two, U.S. Constitution), decline jurisdiction of a federal claim by refusing to enforce a right arising from the law of the United States; Howlett v. Rose, 496 U.S. 356, 110 L.Ed2d 332, 339,110 S.Ct. 2430 (1990).

For the reasons stated above, Appellant respectively prays that this Court will deny the motions filed by Appellee Carpenter.

MEMORANDUM BRIEF

UNDER NEB. REV. STAT. SECTION 25-1911 (Reissue 1995), THE COURT OF APPEALS AND SUPREME COURT HAS JURISDICTION TO REVIEW A FINAL ORDER OF THE DISTRICT COURT WHICH AFFECTS THE SUBSTANTIAL RIGHTS OF THE PARTY AGAINST WHOM THE ORDER IS DIRECTED WHEN THE NOTICE OF APPEAL IS FILED WITHIN ONE MONTH FROM ENTRY OF THE FINAL ORDER

Under Nebraska law, an appeal shall be deemed perfected, giving the court jurisdiction, when notice of appeal has been timely filed and the docket fee timely deposited; State v. Price, 198 Neb. 229, 252 N.W.2d 165; Fick v. Herman, 161 Neb. 110, 72 N.W.2d 598; County of Madison v. Crippen, 143 Neb. 474, 10 N.W.2d 260; and Caro, Inc. v. Roby, 215 Neb. 897, 342 N.W.2d 182 (1983). Where Notice of Appeal is properly given in district court, Supreme Court acquires jurisdiction when transcript is filed, without further notice being required; Marvel v. Craft, 116 Neb. 802, 219 N.W. 242.

Appellee, Carpenter, claims in his motions that this matter was dismissed on September 5, 1991 and no timely appeal was taken. However, motions to vacate judgment of dismissal were filed and the "notice of appeal" dated October 30, 1996 was served upon defendant, Carpenter, through his attorney and clearly states that Glenn R. Waite hereby notifies all parties that he intends to prosecute an appeal to the Nebraska Court of Appeals and Nebraska

Supreme Court from the decision of the Honorable Judge Paul Empson dated October 3, 1996 and from the decision to deny plaintiff's motion to reconsider Order dated October 3, 1996. On December 3, 1996, the Clerk of the Nebraska Supreme Court gave notice that "this office is in receipt of transcript". The transcript clearly shows that the notice of appeal was timely filed and that the docket fee was timely deposited.

Appellee, Carpenter, overlooks the rule of law which states that the Supremacy Clause forbids state courts to decline jurisdiction because they want to refuse to recognize the superior authority of its source; Howlett v. Rose, 496 U.S. 356, 110 L.Ed2d 332, 110 S.Ct. 2430(1990).

Therefore, Appellee Carpenter's claim that this Court lacks jurisdiction is wholly without merit.

THE QUESTIONS PRESENTED IN THIS APPEAL ARE SUBSTANTIAL AND DO REQUIRE ARGUMENT AND IT WOULD BE A GROSS INJUSTICE TO SUSTAIN THE APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE

Under Supreme Court Rule 7 (B) (2), the Appellee may file a motion for summary affirmance after the Appellant has filed his Brief. However, the motion must document the claimed lack of substance of the questions presented by citations to the dispositive portions of the record and to the controlling statutory and case law. Appellee, Carpenter, merely states on face value that the final order of the District Court was correct in all respects and the previous Court of Appeals decisions are res judicata on the question of the personal representative's alleged

unauthorized practice of law without citing the dispositive portions of the record and without citing the controlling statutory and case law. Appellee, Carpenter, overlooks the rule of law stated by the U.S. Supreme Court, Federal District Courts, and state courts which hold that res judicata is inapplicable and of no defense where, between the time of the first judgment and second action, there has been an intervening judicial decision or change in the law creating an altered situation; Blair v. Commissioner, 300 U.S.5, 57 S.Ct. 330, 81 L.Ed 465 (1937); State Farm Mut. Automobile Ins. Co. v. Duel, 324 U.S. 154, 65 S.Ct. 573, 89 L.Ed 812 (1945); Mission Theatres v. Twentieth Century-Fox Film Co., 88 F.Supp. 681 (1950); Hurd v. Albert, 3 P.2d 545 (1931); and West Coast Life Ins. Co. v. Merced Irr. Dist., 114 F.2d 654 (1940). **See Appellant's Brief pages 35 to 37.**

Appellee, Carpenter, also overlooks the rule of law which states that an accused has a right to an impartial judge in the trial court regardless of the evidence against him; Tumey v. Ohio, 273 U.S. 510, 71 L.Ed 749 (1926). Appellee, Carpenter, also overlooks the rule of law which states that the due process clause is concerned not only with actual bias, but also with the appearance of justice; Exxon Corp. v. Heinze, 32 F.2d 1399 (9th Cir.1994). Appellee, Carpenter, also overlooks the rule of law which states that the paticipation of a judge who has a substantial interest in the outcome of the case of which he knows at the time he participates necessarily imports a bias into the deliberative process; Aetna Life

Ins. Co. v. Lavoie, 475 U.S. 813, 831, 89 L.Ed2d 823, 106 S.Ct. 1580 (1986). Appellee, Carpenter, also overlooks the rule of law which states that when a judge is related to either of the parties or, if at any time before its final termination, he, or his wife is an officer in the corporation which is a necessary party to the proceeding he cannot take cognizance thereof unless all parties to the suit consent in writing; Highland v. Empire Nat. Bank, 114 W.Va. 473, 172 S.E. 544 (1933). **See Appellant's Brief pages 28 to 33**. The court record shows that Anne Hippe, wife of Judge Robert O. Hippe, was and is an officer within the corporate structure of defendant, Regional West Medical Center, (T47, T52). The court record shows that the case was **not** finally terminated on September 5, 1991 because the court never heard or rendered a decision on the defendant's motion to strike pleadings and to dismiss filed July 19, 1991 (T103). **See Appellant's Brief page 43 to 46**.

Therefore, Appellee Carpenter's claim that the questions presented for review are so unsubstantial as to not require argument is wholly without merit.

Appellant respectively prays that this court will deny the Appellee's Amended Motion for Summary Dismissal and Motion for Summary Affirmance.

Glenn R. Waite
Appellant-Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing OBJECTION AND MEMORANDUM BRIEF to be served upon James A. Snowden, Suite 830, NBC Center, Lincoln, NE 68508; Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114 by first class U.S. Mail this the ___day of February 1997.

_____

Glenn R. Waite

IN THE SUPREME COURT FOR THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff-Appellant, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendant-Appellees.	* * * * * * * *	NO. A-96-1118 **APPELLANT'S PETITION FOR FURTHER REVIEW AND SUPPORTING MEMORANDUM BRIEF**

PETITION FOR FURTHER REVIEW

Appellant, Glenn R. Waite representing his own personal rights as personal representative and as sole distributee of the estate of Harriet I. Waite, deceased, petitions the Nebraska Supreme Court for further review of the decision of the Nebraska Court of Appeals on May 23, 1997 pursuant to Neb. Rev. Stat. section 24-1107 (Reissue 1995) and based on the following errors:

1) The Court of Appeals erroneously determined it lacked jurisdiction because the claim by Carpenter in his motion for summary dismissal that the pleadings filed by Waite after September 5, 1991 are a nullity is a matter going to the merits of the controversy rather than a lack of jurisdiction over the merits and this erroneous determination violated Waite's rights of access to the courts pursuant to Article IV and Amendments 1 and 14 of the U. S. Constitution.

2) The Judges of the Court of Appeals who entered the order dismissing this appeal under Supreme Court and Court of Appeals Rule 7B(1) for lack of jurisdiction violated Article VI of the

U.S. Constitution by refusing to take jurisdiction of the federal questions within their jurisdiction.

APPELLANT'S SUPPORTING MEMORANDUM BRIEF

INTRODUCTION

On September 5, 1991, Judge Robert O. Hippe entered a summary judgment of dismissal on the sole question of whether there was any genuine issue as to any material fact that the pleadings filed by the plaintiff were a nullity (T14, 1:8 to 19:17). On December 29, 1995, Waite filed his amended motion to vacate judgment of dismissal (T40) alleging that the summary judgment of dismissal was void under the 14th Amendment because it was rendered by Judge Hippe who allegedly has a pecuniary interest in the results of this lawsuit (T42). Since the judgment of dismissal was null and void, Waite filed a second amended petition (Supp. T. 33) and a third amended petition (T46). On October 3, 1996, Judge Empson took judicial notice of pleadings and judgments in cases 38268 and 38271 (T91) without prior notice to Waite and entered an order overruling Waite's amended motion to vacate judgment of dismissal and third amended petition (T94). On October 10, 1996, Waite filed a motion for new trial alleging that the Court violated his U.S. Constitutional rights by taking judicial notice and determining "res judicata" without notice and the opportunity for a hearing and alleging that Neb. Rev. Stat. section 7-101 (Reissue 1991) is unconstitutional (T96). On October 25, 1996, Judge Empson overruled Waite's motion for new trial and issued a new order which stated that the

clerk was to notify the county attorney of Scotts Bluff County, Nebraska, if any further pleadings are filed by Mr. Waite pro SE in this case or any companion case (T102). On November 1, 1996, Waite filed his Notice of Appeal. On December 10, 1996, Appellee Carpenter filed his motion for summary dismissal claiming that the pleadings filed after September 5, 1991 are a nullity. On March 3, 1997, The Court of Appeals entered an order extending Carpenter's time to file his brief. On May 23, 1997, the Court of Appeals entered an order dismissing this appeal under Rule 7(B)(1).

ARGUMENT

THE CLAIM BY CARPENTER THAT THE PLEADINGS FILED BY WAITE AFTER SEPTEMBER 5, 1991 ARE A NULLITY IS A MATTER GOING TO THE MERITS RATHER THAN A LACK OF JURISDICTION OVER THE MERITS.

The only issue determined by the Nebraska Court of Appeals was whether or not they had jurisdiction.

The United States Supreme Court has clearly defined jurisdiction:

> "By jurisdiction is meant the power to entertain a suit, consider the merits, that is, the various elements which enter into and qualify the plaintiff's right to relief sought, and render a binding decision thereon."; General Investment Co. v. New York Central R. Co., 271 U.S. 228, 70 L.Ed 920 (1925).

In General Investment Co., supra, the plaintiff filed a suit seeking to enjoin defendant from dominating competing roads through stock control. The defendant moved to dismiss the suit on ground of lack of

jurisdiction alleging that plaintiff had no right to relief sought. The U.S. Supreme Court reversed the lower court decision and held that whether or not a plaintiff seeking relief against a threatened or actual violation of law has the requisite standing is a question going to the merits, and its determination is an exercise of jurisdiction. If it is resolved against him, the appropriate decree is a dismissal for want of merits, not for want of jurisdiction.

In Wabash R. Co. v. Duncan, 170 F.2d 38 (8th Cir.1948), the court held that "jurisdiction" is the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence, and while it may be shown in defense that plaintiff has no right under the allegations of his bill or the facts to bring suit, that is not a defect of jurisdiction, but of title.

In Radil v. Sawyer, 85 Neb. 235, 122 N.W. 980 (1909), this Court held that the test of jurisdiction is whether the tribunal had the power to enter upon the inquiry, and not whether its methods were regular, its findings right, or its conclusions in accordance with the law.

In the present case, Carpenter filed a motion for summary dismissal on December 10, 1996 requesting the Court of Appeals to dismiss the appeal on the ground of lack of jurisdiction because he claimed that the pleadings filed by Waite after September 5, 1991 are a nullity citing Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989) and Nicklaus v. Abel, 164 Neb. 842, 83 N.W.2d 904 (1957). However, the fact and law

issues or "merits" at the appeals stage in Back Acres and Nicklaus were whether or not a person acting a a fiduciary capacity could go forward "pro se" on the merits of the action. The Nebraska Supreme Court entertained the suit, considered the merits, that is the various elements which enter into and qualify the plaintiff's right to the relief sought, and then rendered a binding decision thereon. Pursuant to the U.S. Supreme Court's definition of "jurisdiction" in General Investment Co., supra, the Nebraska Supreme Court in Back Acres and Nicklaus exercised its jurisdiction over the merits of the controversy. The claim by Carpenter that the pleadings filed by Waite after September 5, 1991 are a nullity is a matter going to the merits of the controversy rather than a lack of jurisdiction over the merits. Furthermore, jurisdiction is determined by the allegations of the bills and not by the way the facts turn out or by a decision on the merits of the controversy; Mosher v. City of Phoenix, 287 U.S. 29, 52 S.Ct. 67 (1932).

Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong and means not simply jurisdiction of the particular case then occupying the attention of the court but jurisdiction of the class of cases to which the particular case belongs, the authority to hear and determine both the class of actions to which the action before the court belongs and the particular question which it assumes to determine; State Ex. Rel Bauersachs v.

Williams, 215 Neb. 757, 340 N.W.2d 431 (1983).

Did the Court of Appeals have subject-matter jurisdiction?

First, this is a wrongful death case (T48). The district court has jurisdiction over wrongful death cases; Neb. Rev. Stat. sections 24-302, 30-809, and 30-810 (Reissue 1995).

Second, District Court has jurisdiction to determine the particular question of whether or not its judgment is void (T40); Ehlers v. Grove, 147 Neb. 704, 24 N.W.2d 866 (1946).

It is obvious that the District Court had jurisdiction of both the class of actions to the which the action belongs and the particular question which it assumes to determine.

Third, under Neb. Rev. Stat. section 25-1911 (Reissue 1995), the Court of Appeals and Supreme Court have jurisdiction to review a final order of the district court which affects the substantial rights of the party against whom the order is directed when the notice of appeal is filed within one month from entry of the order; State v. Price, 198 229, 252 N.W.2d 165; Fick v. Herman, 161 Neb. 110, 72 N.Wd2d 598; County of Madison v. Crippen, 143 Neb. 4744, 10 N.Wd2d 260; Caro, Inc. v. Roby, 215 Neb. 897 342 N.Wd2d 182 (1982).

Fourth, as claimed by Carpenter, the Nebraska Court of Appeals and Supreme Court have jurisdiction to determine the particular question of whether the pleadings filed by a plaintiff are a nullity; Nicklaus v. Abel, 164 Neb. 842, 83 N.W.2d 904 (1957).

It is obvious the Nebraska Court of Appeals and Supreme Court have jurisdiction over wrongful death cases brought for review pursuant to Neb. Rev. Stat. section 25-1911 (Reissue 1995) and jurisdiction over the particular question (whether pleadings filed by Waite after September 5, 1991 are a nullity) brought by Carpenter in his motion to dismiss appeal. Dismissal of this controversy for lack of jurisdiction does not prevent Waite from filing further lawsuits since there has been no judgment on the merits of the controversy under Res Judicata; Kerdt v. Ronan, 236 Nb. 26, 458 N.W.2d 466 (1990). In order to avoid further lawsuits on this controversy, Carpenter obviously needs to obtain a judgment on the merits.

SINCE THE COURT OF APPEALS HAS JURISDICTION OVER THE SUBJECT-MATTER AND JURISDICTION OVER THE PARTIES, THE COURT OR JUDGE CANNOT DECLINE JURISDICTION SIMPLY BECAUSE A U.S. CONSTITUTIONAL ISSUE IS PRESENTED FOR REVIEW.

Article VI, paragraph 2, of the U.S. Constitution states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In Hathorn v. Lovorn, 457 U.S. 255, 269, 72 L.Ed2d 824, 837, 102 S.Ct. 2421 (1982),

the court held that State Courts, like federal courts have a constitutional obligation to uphold federal law and there is a presumption that state courts enjoy concurrent jurisdiction over claims involving federal issues, and even a finding of exclusive federal jurisdiction over claims arising under federal statute usually will not prevent a state court from deciding a federal question collaterally. In Howlett v. Rose, 496 U.S. 356, 110 L.Ed2d 332, 339, 110 S.Ct. 2430 (1990), the Court held that a state may not evade the strictures of the federal Constitution's privileges and immunities clause which requires a state to accord to citizens of other states substantially the same right of access to its courts as it accords to its own citizens, by denying jurisdiction to a court otherwise competent. In Douglas v. New York, N.H. & H.R. Co., 279 U.S. 377, 387-88, 73 L.Ed2d 747, 49 S.Ct. 355, the Court held that such a court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a "valid excuse". An excuse that is inconsistent with or violates federal law is not a valid excuse. The Court, 496 U.S. at 367, held that federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum - although both might well be true - but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the

supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

In the present case, as discussed previously, the Court of Appeals and Supreme Court have subject matter jurisdiction over this case. Carpenter has entered his voluntary appearance by filing his motion for summary dismissal. Waite has entered his voluntary appearance both as personal representative and as sole distributee by filing an objection on December 24, 1996 to Carpenter's Motion for summary dismissal. The Court of Appeals and Supreme Court have personal jurisdiction over the parties. The federal questions presented for review in the Court of Appeals and Supreme Court are whether the district court correctly determined whether Waite's U.S. Constitutional rights of due process were violated by (1) not providing him with an impartial decision maker on September 5, 1991 (T42) and (2) by taking judicial notice of pleadings and judgments in 38268 and 38271 without prior notice and opportunity for a hearing (T96). Such claims are not frivolous; Tumey v. Ohio, 273 U.S. 510, 71 L.Ed 749 (1926); and Garner v. Louisiana, 368 U.S. 157, 7 L.Ed2d 207, 82 S.Ct. 248 (1961).

CONCLUSION

The claim by Carpenter in his motion for summary dismissal that the pleadings filed by Waite after September 5, 1991 are a nullity is a matter going to the merits of the controversy rather than a lack of

jurisdiction over the merits. Dismissal of controversy for lack of jurisdiction does not prevent further lawsuits over this controversy. The Court of Appeals has both subject-matter jurisdiction and personal jurisdiction of the controversy and cannot under Article VI of the U.S. Constitution refuse to determine the merits of federal issues properly brought before the Court.

For the reasons set forth above, Waite earnestly prays that this Court will grant his petition for further review.
Dated this the ___ day of June 1997.

_____
Glenn R. Waite
Plaintiff-Appellant
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused two true and correct copies of the foregoing **Petition for Further Review and Supporting Memorandum Brief** to be served upon James A. Snowden, 830 NBC Center, Lincoln, NE 68508; Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114; and Don Stenberg, Nebraska Attorney General, 2115 State Capitol Bldg, Lincoln, NE 68509-8920 by first class U. S. Mail this the ___day of _____ 1997.

_____
Glenn R. Waite

ATTACHMENT TO PLAINTIFF'S AMENDED MOTION FOR JUDGMENT UPON FAILURE TO ANSWER PURSUANT TO Neb. Rev. Stat. section 25-1308.

Catalog published by Western Nebraska Community College in March 1996 showing Anne Hippe to be the division Chairsperson of the Practical Nursing Program which is affiliated with Regional West Medical Center a/k/a Western Nebraska General Hospital.

Page 153, Western Nebraska Community College Catalog, 1996-97
Division Chairspersons

Anne Hippe (Scottsbluff)
Division of Health Occupations
Practical Nursing
B.S.N., Bishop Clarkson College
R.N. Diploma, Methodist School of Nursing-Omaha. Additional Studies, University of Nebraska-Lincoln, Chadron State College

Catalog published April 1989 showing Anne Hippe to be an officer in the practical nursing program of Western Nebraska Community College which is affiliated with Regional West Medical Center a/k/a Western Nebraska General Hospital.

Page 235, Western Nebraska Community College Catalog, 1989

Anne Hippe
Practical Nursing
R.N. Diploma, Methodist School of Nursing-Omaha. Additional Studies, University of Nebraska-Lincoln, Chadron State College, Bishop Clarkson College

EXHIBIT 2 ATTACHED TO PLAINTIFF'S THIRD AMENDED PETITION FILED JULY 15, 1996

AFFIDAVIT OF COLLEEN E. NASH

COUNTY OF MARICOPA)
) ss.
STATE OF ARIZONA)

I, Colleen E. Nash, first duly sworn on oath, makes this affidavit, based on personal knowledge and deposes and states:

1) I had known Harriet I. Waite since October 1949 until April 17, 1989, the date of her death.

2) During the time of knowing Harriet I. Waite she had been always of sound mind.

3) On the 6th April 1989, I and my husband arrived in Scottsbluff, Nebraska where Harriet I. Waite had been hospitalized. We parked our RV in the parking lot. I spent everyday with Harriet I. Waite until her death on April 17, 1989. After being there a few days, I also started spending the nights in her room.

4) On or about April 10, 1989, Harriet I. Waite and I discussed resuscitation. Harriet I. Waite told me she wanted to be resuscitated or whatever was necessary to be revived. At no time, to my knowledge, did Harriet Waite change her mind as to her decision regarding resuscitation.

5) At no time, to my knowledge, was I aware of any "no code" or "do not resuscitate order" being charted on Harriet Waite's medical chart.

6) On April 14, 1989, I was present in the room with Harriet I. Waite when a nurse came into the room and told Harriet Waite that the charge nurse was going to come in shortly and start a morphine drip on her. Soon Charge nurse, Nancy Adams, came into the room of Harriet Waite with the morphine

drip and started to get the equipment ready to begin the drip. I overheard the conversation between the charge nurse and Harriet Waite. Harriet Waite asked the charge what she had. Nancy Adams, the charge nurse, said, "I have a morphine solution that I'm going to start on you".. Harriet Waite said, "I don't want the morphine drip started on me". Nurse Nancy Adams said, "Dr. Carpenter ordered this for you and it will make you more comfortable". At that time Nancy Adams was observed to start hooking up the morphine drip to Harriet Waite. Harriet Waite said, "But, I don't want that morphine drip because I know what that means". Charge nurse, Nancy Adams, continued to hook up and put in the morphine drip. After the charge nurse, Nancy Adams, finished starting the morphine drip, Harriet Waite again stated to Nancy Adams, "I don't want this morphine drip". Soon Nancy Adams left the room. I then asked Harriet Waite what she meant by the statement to the nurse, "I know what this means". Harriet Waite told me, "It means the end." Approximately 2 hours after the morphine drip was started, I observed Harriet Waite to be less alert and did not respond to normal conversation and had to be shook to get a response. This was a remarkable change in contrast to her responses and conversation she had prior to the morphine drip.

7) On the 15th of April 1989, a nurse cam into Harriet Waite's room while I was present and removed Harriet Waite's feeding tube. At that time Harriet Waite continued to be less alert and did not respond to normal conversation which was the same condition she had about 2 hours after the morphine drip was started on April 14, 1989.

8) On the 16th of April 1989, I was present in Harriet Waite's room and observed that there were periods when Harriet Waite

stopped breathing for about a minute. I had not observed this in Harriet Waite before. I also observed that Harriet Waite was less responsive than she had been on the 15th of April 1989. I had to get down next to her ear and shake her in order to get any response from her.

9) On the 17th of April 1989, I was present in Harriet Waite's room and observed blue discoloration in Harriet Waite's feet and legs and her fingers. I also observed that she was having periods when her breathing would stop for about 1 and 1/2 minutes. Early in the morning of April 17, Harriet Waite responded very little by putting my head down next to her ear. By noon, she did not respond to my voice down next to her ear.

10) On April 17, 1989 at approximately 2 PM while I was present in Harriet Waite's room, I observed Dr. Carpenter enter the room. He looked at Harriet Waite for about a minute and then changed the morphine drip by increasing the rate. He then left the room.

11) At approximately 2:30 PM on April 17, 1989 while present in Harriet Waite's room, I observed two nurses enter the room to turn her. I observed Harriet Waite's face turn blue and saw her gasping for air. Doris Butler, daughter of Harriet I. Waite, was present in the room and she said to the nurses, "Aren't you going to do something?". The nurses left the room and could be seen and heard crying outside the room. No attempt to resuscitate her or to revive her were made.

FURTHER AFFIANT SAYETH NOT.

_____
COLLEEN E. NASH

Subscribed and sworn to before me this ___ day of January 1993.

_____
NOTARY PUBLIC